



REPUBLIC OF KENYA



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In re Estate of Aloise Rentare Nyamu (Deceased) (Succession Cause E002 of 2021) [2024] KEHC 4794 (KLR) (8 May 2024) (Judgment)

Neutral citation: [2024] KEHC 4794 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
SUCCESSION CAUSE E002 OF 2021**

EM MURIITHI, J

MAY 8, 2024

IN THE MATTER OF THE ESTATE OF ALOISE RENTARE NYAMU (DECEASED)

BETWEEN

SECONDINAH KANINI NYAMU APPLICANT

AND

SADIA NYAMU 1ST RESPONDENT

JAMES MUGAMBI 2ND RESPONDENT

JUDGMENT

1. By Summons under certificate of urgency dated 12/10/2021 brought under section 76 of the [Law of Succession Act](#), Rules 44, 55, 63 and 73 of the [Probate and Administration Rules](#), and all enabling provisions of the law, the applicant seeks that:
 1. Spent
 2. The Respondents be and are hereby restrained from utilizing the letters of Administration issued to them herein.
 3. The Letters of Administration dated 18th August, 2021 of the estate of Aloise Rentare Nyamu (deceased) who died on 10th day of October, 2020, granted to Sadia Nyamu and James Mugambi Kaberia in this cause be revoked.
 4. This be pleased to give further and appropriate orders to ensure expeditious determination of this cause.
 5. The costs of this application be in the cause.
2. The application is premised on the grounds on the face of it and supporting affidavit of the applicant sworn on even date. She avers that she took care of the deceased when he fell sick and is paying school



fees for his children. At the time of his death, the deceased had divorced the 1st respondent and she only showed up during his burial. The application is meritorious and necessary in the circumstances because the grant of letters of administration intestate was erroneously issued to the respondents, while her objection thereto was still pending determination. She and other lawful beneficiaries of the deceased did not consent to the respondents being administrators of the estate, as the 1st respondent is not a widow of the deceased neither is the 2nd respondent a beneficiary thereto. She accuses the respondents of obtaining the orders of 13/1/2021 in P & A Misc 1 of 2021 through concealment of material facts and failing to include her and her sister Priscilla Kathekia Nyamu in the list of beneficiaries. She further accuses the respondents of failing to disclose that the deceased had made an oral will within 3 months of his death as per the affidavits sworn on 28/12/2020 by Simion Thurairera Erongi and Benedicta Gatune Simion. The 1st respondent was not married to the deceased at the time of his death, as they had divorced about 16 years ago as duly confirmed by the deceased's catholic priest, and thus the deceased is not the biological father of the 1st respondent's last born child. Since the deceased most valued assets are in Nairobi, this cause ought to have been filed in Nairobi and not here. This cause is incurably defective, incompetent, frivolous, vexatious, scandalous, ill motivated, misconceived, amounts to gross abuse of the court process and it should be struck out with costs.

3. The 1st respondent opposed the application *vide* her replying affidavit sworn on 3/11/2021. She avers that she is the widow of the deceased and the 2nd respondent is his nephew. She denies ever getting a divorce or deserting her matrimonial home, and the letter by the priest is not proof of divorce under the law. She ranks high in priority as compared to the applicant and her sister who are nieces of the deceased, as their mother, Colleta Kirito is a sister to the deceased. She categorically disputes the existence of any oral will or otherwise over the estate of the deceased, as the deceased herein died intestate. Since the death of the deceased, she has been struggling to make ends meet and provide for her children while the applicant continues to illegally collect rent from the deceased's rental properties. She is advised by her advocates that the applicant's aforementioned conduct is tantamount to intermeddling with the estate, and she should be compelled to provide an accurate account of all the rental income she has collected therefrom since 10/10/2020.

Statements

4. James Mugambi Kaberia, Cassiano Kailikia Lintari, Grace Nduru Lintari, Mwilaria Thiringi and Augustine Mugambi, the deceased uncle, brother, sister, cousin and friend respectively, filed witness statements dated 24/5/2021 in opposition to the application for revocation of the grant.

Oral Evidence

5. OW1 Secondinah Kanini Nyamu produced Kenya Alliance Banking dated 29th July, 2016 contained in bundle of documents dated 28th April, 2022 as OW1 Ex. No. 1. She testified that, "I have been managing the property of the deceased father Aloise Rentare Nyamu. He is the deceased in this Succession Cause. I am aware that letters of Administration have been granted to Sadia Nyamu and James Mugambi. I have signed an affidavit sworn on 12th October, 2021. I wish to rely on the affidavit which I confirm are true. I apply for search of grant. I am the beneficiary. I know Sadia Nyamu. She left home and went away a long time. I know her as girlfriend. My father has left me everything together with Elias Mwingiria Nyamu. My father has recognized me as his daughter and I have all the events. My father had an oral will. I pray that the court grants me property that my father left me. According to the wishes of the deceased he did not want Sadia to get anything. I stayed with Elias Nyamu and Alamin Akwalu who is adopted. The child Elias Nyamu is a child of Sadia Nyamu. The other child is adapted. I lived with the children at my father's house at Buruburu together with my father. Sadia Nyamu came during the burial of my father. I used to live at my house where I worked. When he got



sick that is when I went to live with him so that I could take care of him. I have lived at Buruburu with my father since 2003 when I finished school. I stayed there with my father and Elias until his death of my father. Sadia never visited us. When our father got sick and went to India he used to call me from India. I have never seen Sadia come to visit my father. I do not know whether my father used to give money for maintenance to Sadia. I was not informed when the petition for grant was made. I do not know James Mugambi. I do not know of his relationship with my father.”

6. On cross examination, she stated that, “You are daughter of deceased? Is he your father? My mother is Colleta Kirito Rintari. I only knew him deceased as my father. My witness Colleta Kirito Rintari is a sister to Aloise Rintari Nyamu the deceased herein. Mr. Aloise Rintari is not my biological father. But I was brought up by the deceased. He accepted me as his daughter. I have been paying fees for Elias Nyamu and Alamin Alule Noor. I do not know one Imran Nyamu. The deceased left all the property to me. He sent the message by phone. I gave my lawyer. He has written even in Policy Kenyan Alliance. I only recognize Elias Nyamu. Elias Nyamu is son of the deceased with Sadia Nyamu. I have title deeds for the deceased’s property apart from one property in Umoja whose title has not been traced. On the buruburu I have the lease and I was not able to get the title from the place where the deceased has sent to me but I was refused by Sadia Nyamu. I got the titles of the deceased home at Mikinduri. I took the titles after the death of the deceased. My father had given me permission to get the documents. I had authority and key to the house at Mikinduri. I did not break the house at Mikinduri. I did not get the title at Buruburu because Sadia told me not to go to Buruburu. You have children to defraud Sadia? It is not true. My witness, my auntie Benedicta Gaturia, Charity Kiruru and Ncekei, Elizabeth and the deceased are siblings. The deceased did not have brothers. There is not point to chase Sadia. She was not a wife. She was not chased away. Sadia had gone away. (Witness is referred paragraph 1). She was not divorced. She was not married. I never stated the evidence in paragraph 4 of the affidavit is wrong. I have criminal case at Mikinduri for house breaking at Mikinduri. I am not aware of case. According to the statement of deceased to me and his advocate Kwiranki he did not wish the Sadia get anything. It was oral will. Wishes of deceased were drafted. I am not the one who introduced Karunka to the deceased. I have worked with Karuka at his office. I did not have a sex relationship with Karunka. I did not introduce the deceased to advocate karunka. I have heard of James Mugambi. I do not know him very well. I have worked at the office of James Mugambi. I have known him as a family member of my grandfather’s home. I only know him from my grandfather’s family. He is a distance relative. James Mugabi is a far relative.”
7. On re-examination, she stated that, “James Mgambi is far relative. I do not know his relationship with Aloise Rintari. I have worked at Karuka’s office as secretary in 2013. I worked for one year. I was introduced to Karunka by my father Aloise Rintare. He knew Karunka before me.”
8. OW2 Father John Kariithi Munjuri and a catholic priest with Arch Thuaba of Nairobi, St. Charles Lwanga Parish at Kamirithu Limuru adopted his witness statement dated 4/3/2022 as his evidence in chief.
9. On cross examination, he stated that, “Deceased was my public father, mentor and supporter. He educated me High School and paid all my upkeep. He was a generous man. I was close to him. He told me personal things. Were you the only person who benefited? Many other people may have benefited from his generosity. I know Secondina Kanini Nyamu (objector). She is adopted daughter of the deceased. She was the daughter. She was not biological daughter. I did not know whether he was a poster father to other people. I do not know whether other people considered him as father. Statement of witness dated 4th March, 2022 paragraph 5. Divorced former wife for 16 years ago. The statement is supported by letter of Father Gitonga of 12th January, 2021. I do not have the letter of Father Patrick Gitonga. Aloise Rintari died on 10th October, 2020. The letter of 12th January, 2021 was calling Mr.



Nyamu to receive the Holy Communion having been sustained that he was single. Is the letter 12th January, 2021 a divorce letter? No. it is not a divorce letter. Aloise was single. I do not have evidence that he was married. My statement in paragraph 5 is referring to the letter dated 12th January, 2021 by Father Patrick Gitonga Nyaga. Draft with? I have a draft with but I did not carry it. Paragraph 7. Deceased wishes was and what the deceased shared with me. The copy of the will that I have was not signed. In the will I am not a beneficiary. I do not have evidence whether the deceased was married to Sadia. I do not have an interest in the estate. I know the children of the deceased as 1. Secondina Kanini 2. Elias Mwingirwa 3. Priscilla Kathekia. I do not know of any other children. I have never heard of Imran Nyamu. I know the witness Kathekia. She is sister to deceased. Secondina is also child of a sister to the deceased. Aloise was not the biological father. He adopted both the children.”

10. OW3 Henry Karunka Advocate adopted his witness statement dated 4/3/2022 as his evidence in chief. He went on to testify that, “I had known the deceased from 2002 when I practiced with Kamau Kuria and Kiraitu Associate. I was assigned his matters and when I started my law firm in 2002 Mr. Nyamu was my client until the time he died and I was his lawyer in every way legal matters. We had known each other for 18 years. He told me that he did not have a wife because they had separated with the 1st petitioner. I did not see any certificate of marriage. He did not tell me the details.

Wishes of the deceased. He had expressed his wishes but before reducing the wishes in writing into a will he informed me to wait so that he could obtain titles to the properties which were under adjudication in Meru. At the same time he was pursuing title documents for Umoja property which has flats and apartments. I got to know Secondinah Nyamu. All along he told me that Secondina was his daughter and they were actually doing much of working together. I got to know the deceased first. He is the one who brought Secondina to my office and told me that Secondina is his daughter and he was having parental responsibility over her. Secondina worked for me briefly. But unfortunately the deceased was diagnosed with acute avebela and because he was staying alone he asked to release Secondina to allow him to operate direct. Secondina now left my office where she worked as secretary. Mr. Nyamu continued coming to my office as we had many matters. I am here to testify and give information to the court on what I know about the deceased and enable the court to determine the issue in a fair manner. I am only here to assist the court not to favour any parties.”

11. On cross examination, he stated that, “I have known deceased for 18 years. There is no written will. He died before the will was marked into writing. He had called me about 2 weeks before he died and asked to prepare the will. The list of will were given earlier. I cannot remember the time. We came from the same area and the deceased. I know the family. At the time of death he was single. He confirmed to me that he had a relationship with the 1st petitioner. He did not give me the details. He was very generous. He supported many people. He supported even general churches were some churches named after him. St. Aloisious Catholic Church in Tigania East. They thought Mr. Nyamu was a multimillionaire because he was very generous. I did not get to know much about the 1st petitioner. The topic between him and the 1st petitioner we did not entertain. I do not know whether the petitioner is a catholic or Muslim. I do not know whether Catholic Church sought to open for him to receive holy communion. He was passionate about the church. I do not know whether he had to leave to 1st petitioner to continue to receive Holy Communion. I do not know whether Catholic Church at Mikinduri was during the days between deceased and his wife who is a Muslim. The applicant daughter of deceased. As far as I am concerned the deceased said he was a daughter. He had taken care of applicant and taking parental responsibility for her right from the childhood. He took care of 1st petitioner’s brother who he lost his wife and Mr. Nyamu assisted with medical expenses. Mr. Nyamu informed me that he decided to



give his young child to the 1st petitioner's brother who was Mr. Nyamu Personal Assistant and driver. He also took care of his hospital bill of over 1,000,000 and he agreed to assist the young child until he finishes school. Mr. Nyamu stayed with the Personal Assistant until the date of his death. Mr. Nyamu came from a family of 2 wives and he was the only son on the mother's side. I do not know much details. From Mr. Nyamu even cousins and neighbors he treated as his family. Sisters to the deceased are trying to push away the 1st petitioner? That would be inappropriate and I do not think it is the case. I do not have any interest. I only wish the court to do justice and adopt what the deceased himself wished. I cannot assist anyone who is not entitled. I know Mr. Nyamu wished the applicant greatly and other by called Elias. Mr. Nyamu life is greatly assisted by the applicant.”

12. On re-examination, he stated that, “Mr. Nyamu was assisting the church not through coercion. Many people thought he was a priest. He was very interested in the church matters. He supported churches as a role model of other churches. His generosity was voluntary and it was unconditional. He assisted the weddings, burial and other social funds. When was he even who would assist everywhere he was called upon to assist. All along he was saying he had parted ways with the 1st petitioner and he had no intentions to reunite with her.”
13. OW4 Duncan Mutethia Karutu and a herdsman adopted his witness statement dated 28/4/2022 as his evidence in chief. He testified that, “I know the deceased from 2016. I was employed there as washer man (washing clothes) and cook. I lived with him at Buruburu, Nairobi. I used to make food for him and two children. Elias Mwingira and Alamin Ahmed. I worked from 2016 to 2020 October. I did not know Sadia Nyamu. I used to ask for food stuff to cook from Secondina. I knew Secondina as the daughter. I never saw Sadia Nyamu. Mr. Nyamu told me how he wished his property to be distributed. This was in May, 2020. I was removed from employment by Noor. Noor was the driver to Mr. Nyamu.”
14. On cross examination, he stated that, “I am now raising poultry. I worked for the deceased at the house. Statement of 28th April, 2022 paragraph 8. The deceased told me how his property should be initiated. He said that the children should get education and everything they needed they should ask Secondina. This is my statement I signed it. He told me in May, 2022 while we were driving from Mikinduri to Nairobi. It is Noor who was driving the vehicle. I was in the car with Mr. Nyamu and Mr. Noor. He told me this in May, 2020. He died in October, 2020. He told me this when we were alone together when we got to Nairobi. He told me that the children should get education and if they needed anything they should ask Secondina. He did not give me the numbers of the plot then and account numbers. I do not know the title numbers of the Umoja property. Nairobi Block 29 is sold? He never gave me the number. He never gave me the account number. The account number in paragraph 8. The details in paragraph 8 of statement. Did the deceased give you the title documents for each of property? Yes, he gave me at the time he told me how it is to be inherited. I cannot remember the numbers.”
15. PW1 Sadia Nyamu adopted her affidavit of 3/11/2021 as her evidence in chief. She testified that, “I am a teacher with Teachers Service Commission. I work at Muslim Primary School, Kamukunji Sub county of Nairobi. I am here to testify. I pray for grant of letters of administration. I have replied to the objectors. I pray with my replying affidavit of 3rd November, 2021. I have attached my identity card Sadia Nyamu. Nyamu is my married name. I took my first identity card in 1986 and the new generation in 1996. I got the name Nyamu from the deceased my husband. Marriage with deceased, Mr. Nyamu married in 1990 according to Meru Customary Law because he was a Christian and I was Muslim. We agreed to live together as husband and wife because when two solid faith in a home working can separate. We had much differences at the marriage but we never divorced. We have 2 children together. I took a child from my brother whom the mother was into alcoholic. My husband is the one who made all the arrangements for his fathering of my brother's child. He calls me the mother until today. I have



never been divorced. My husband is a learned man. He never divorced me. He would have gone to court. Secondinah is a niece to the deceased. She is not the daughter of the deceased.”

16. On cross examination, she stated that, “I married Aloise in 1990 according to Meru Customary Law. Meru Marriage involves elders going to the girl’s home. I do not have the elders because they are all deceased. I do not have anything in documentation. I am Meru by tribe. I have 1996 2nd generation identity card. I have the new generation of 2001. Meru name Nyamu is a common name in Meru. It is my evidence that I carry the name Nyamu to show I was married to the deceased. Affidavit of marriage annexure SN4. My father name is Sadia Abdi Naalim. I am the one who signed the affidavit. The deceased signed the copy. I signed the affidavit before an advocate. It is a long time. I did not look for him. We signed the affidavit and went on to live together as husband and wife. When two are in love no one would stop us. We were young lovers. We did not finalize the marriage under Meru Customary Law. We were both learned and we considered the affidavit of marriage was sufficient. Marriage Act of 2014 requires registration. We did not register our marriage. We had differences. We lived together with my husband. Ceremony in Social life any documentation by photographs to show you with the deceased? We did not see any need to produce any documentation. I have a photograph but I did not see the need to bring photographs in court. I applied for grant of letters of administration. I did not tell Secondinah about the petition because she is a niece of the deceased. I was married in the funeral programme. I was obituary I was also involved and I use it as my evidence. The children of the deceased biological are 3. The other children are the children whom he assisted. The deceased and I used to assist Secondina on education, her together with many others including my nieces. I refer annexure SN7 obituary in Daily Nation Oct 14, 2020 lists the children of the deceased. The obituary recognizes Secondina and others as children. It is the same information in funeral programme. I recognize her as niece. She was brought up until adulthood. She is not a beneficiary. We did our affairs together with the deceased. Where were upon when Secondina got all the documents. Secondina was a worker. Who was used by the deceased to conduct all his affairs as he was a civil servant. Why did the deceased to a niece? I work as a teacher and I would not work on the affairs of teachers service commission did not allow. We have our arrangement with my husband. I did not have any documents to show how Secondina was a worker. Secondina had paid schools but she never informed me, we applied for court orders. We later found that she had paid. I have not asked whether she have paid. I took the money to school. My husband was unwell for some time. I was assisting him when he was sick. It is my brother who was taking him to hospital. I do not have documents. I did not have documents to take my husband to hospital.”
17. PW2 James Mugambi Kaberia and the 2nd respondent/petitioner adopted his witness statement dated 24/5/2022 as his evidence in chief. He testified that, “I am managing director Premier Credit Limited. I am shareholder and family member. I am aware of the dispute before the court. I pray for letters of administration and we were given by the court. There was objection. What was your relationship with the deceased? He is my uncle by blood. He is a cousin to my mother. My mother and the deceased are first cousins. Their fathers were brothers. He was my uncle. The deceased was very close to me. I am accountant by professions through Strathmore University 1989 when it was Strathmore School of Accounting. He is the one who took me to school at Strathmore School of Accounting and he supported me by maintenance when school fees were paid by my parents. Throughout I have had the relationship with until he died on and I was the 2nd person who went to him when he died at 4.00a.m. In the morning of 10th October, 2020. The first person I found there were Secondina and Elias Mwingiria Nyamu the son. My uncle called me before he died. They were with Noor the 1st petitioner’s brother. As far as I understand Secondina is a niece just like I am a nephew but son and daughter of the mother to the deceased. We never discussed how he wished to have his property to be inherited. He asked me to just appear when he is finished with his every commitment he wanted to see me. He thought that when he worked and did anything else and he was the last person he would call. Everybody in the family knew



that. Sadia is the wife. I met Sadia very long ago in my life. They have children together. The home was called buruburu. She is the one who was living there first before I did not know what arrangement they had and show did not live there. Given my closeness to my uncle, it is strange that persons who are not close to him have changed details of how property is to be inherited. As far as I am concerned the wife of my uncle is Sadia Nyamu and they had children together. Nyamu had a lot of property and he was always very generous. There is a minor and I was asked to join because of the issue of having a minor and Saida. When we got the letters we got approval to obtain some money from his account for fees before we were stopped. Concerning the child had been provided for by Secondina was Elias Mwingerwa Nyamu and Almin. She didn't pay for Imran and I have been supporting them since he passed on in October 2020. I do not understand how she chose to pay for Elias and Almin. Almin is son of Noor who used to work as a driver and is brother to Sadia and omits to pay for Imran who is Nyamu's son with Sadia Nyamu. I do not have any interest in the estate. I have supporting him for the reason of my uncle who supported me in my education and made me what I am today. I pray for the children to get justice. The father was generous but his children are suffering. They have never enjoyed any piece. The mother is a primary school teacher. The children now have objected as they have never seen any help other than school fees. I pray for fair justice to the widow and children of the deceased."

18. On cross examination, he stated that, "I am a neighbor to the deceased. Deceased left siblings of the deceased. They are of sound mind. We did an objection consent of the deceased siblings. I went to Strathmore in 1989 – 1994. I was about 21 in the 1990. I am Meru. I am aware of Meru Customs Law. Did you attend a marriage with you and Sadia? I was not there. I am aware that she married customary. Many people were there. I was not there. I am aware had some of them are alive. I am married in church Catholic Church. I have a marriage certificate. Did the deceased appoint you as an executor? Yes, but I don't have anything to show. Last spear there are other people he could use. Secondinah was the first person. I found at the hospital together with son Elias Mugwirwa. Sadia Nyamu was not there. He called me when he had gone to see his personal Doctor. He was with Noor. It was on 9th October, 2020."
19. PW3 Grace Nderu Rentari adopted her statement of 24/5/2022 as her evidence in chief. She testified that, "I work in NGO at Nairobi Plan International. I know Aloise Rintari. He is my later brother. He was my step-brother. My father had 2 wives. My brother was married to Sadia Nyamu. They had 2 children. He got married when I had finished form 4 in the late 1980's. I used to go to their home after I finished school. I was an adult when Aloise Rintari married."
20. On cross examination, she stated that, "I testified that Late Aloise was married to Sadia. They married in late 1980 – 88, 89. I did not attend her wedding. I never attending any wedding. Customary or church wedding. It was a customary marriage. I did not know whether evidence of the customary evidence or marriage, or photographs. There were photographs in their house. It was a traditional wedding. My brothers and others went. My brothers and my parents knew. My late two brothers. My brother who went to Keriano and the other deceased brother. I know James Mugambi. He is a first cousin who is very close to us. He was first cousin to the deceased. When we applied for grant in the matter I was aware of the petition. I gave consent to James Mugambi. The consent was verbal. There is nothing written in court. James Mugambi was and is still close to me. He was also close to the deceased. I do not consider what Mugambi said was the truth. He said that Sadia and deceased were not living together? It is true they were not living together at the time. They had issues. The deceased had been unwell in 2016 when we went to India. He went to India alone. That is what told Sadia Nyamu did not go with him. We used to text a lot when he was in India. I was using my phone. I have not produced the chats from my phone. I did not know it would be required. At the time deceased was ill to his death. Secondina was not living together with deceased. I did not know who he was living with the last years. He was in Meru and I was in Nairobi. I don't know who he was living with."



21. PW4 Kanario Kailikia Rintari adopted his statement of 29/5/2022 as his evidence in chief. He testified that, “I am with Ministry of Education and Examination Officer at Marimanti Sub-county, Director of Education office Tharaka Nithi. Aloise Rintari Nyamu is my blood brother. We were 2 brothers and 9 girls. I was the last born in the family of 12. My brother was married to Sadia Abdi who later became Sadia Nyamu they have children. The marriage was in 1989 December when we went with local wazees, we took a bunch of Miraa to their family. I went with elders, James, Mukabia, Kairethi, Mbai, Mwituria, Thiringi. I was the one who carried to bunch of miraa to present to the in-laws and was in accordance with Meru Customary Law. My brother was married to Sadia. I do not know of any other wife upto to the time he died. He was stanch Christian and he could not have taken another wife.”
22. On cross examination, he stated that, “I attended the customary ceremony of Sadia and Aloise. Having the elders were there to be a young men that was me. The other elders have died. This happened in December 1989. I recall that event clearly.

Statement of 24th May, 2022. I am the one who recorded the statement and I signed. I did not mention that I attended customary law marriage as a young man. I had not been asked. I did not mention about attending the customary law marriage. James Mwileria and the elders are alive. I did not know any of the were witnesses. Mwilaria, Mwirigi and the next witness. At the time of death, the deceased was living with Sadia Nyamu. I never heard of any separation between the two. Any photograph of the two as spouse? Even at my wedding they were the ones who stood as my parents. We were taken a photograph I have not produced the photograph. I visited my brother. We share a compound. My house is next to his. He went to India for treatment. I gave him burial permit of my father to obtain a passport. I do not know whether he was accompanied by Sadia to India. I do not know whether he was accompanied Sadia Nyamu. Paragraph 19 of statement. My brother said that James Mugambi should manage the 2 offices despite him having a wife.”

23. PW5 Mwileria Thiringi adopted his witness statement recorded on 24/5/2022 as his evidence in chief. He testified that, “I am a farmer. I know deceased Aloise Nyamu. He is my brother. I know Mr. Aloise was married. I am the one of the persons who went to take Miraa to the girl’s home. I was one of the elders this was about 1989. I know that Nyamu did not have any other wife at the time of his death. He only had Sadia Nyamu.”
24. On cross examination, he stated that, “I am 70 years old. I was born 1953. When I went to take miraa to Sadia’s home. I was attending as an elder. You were 36 years is it an elder? I had married at the time. According to kimeru Customs a person of 36 years is an adult. In a groups of elders people. I am taken as an elder. I am njuri ncheke elder at the time. After that occasion we were with Mugambi, James Muketha, Venecio, Vai Kailikia, Karicho who was a young boy. It is only Kasieko and I who have come to testify in court. The others are deceased. Mugambi was with us. He is the witness today. The matters I have said today are not recorded in the statement. I recorded that I was a brother to Nyamu. I was not asked whether I had gone to Sadia’s home. Sadia said all the elders who went for marriage ceremony had died? I do not know that what she said. Is it that it was an afterthought? I remember how I lived with the deceased. The deceased was my cousin. I live at Meru. Did you live at Nairobi? We stayed with him at Nairobi in 2005 – 2020. I lived with him and he would send me to bring newspapers and buy things to shot and pay electricity. I send to work as the assistant. James Mugambi Kaberia, Grace Rintari who has first testified before the court many used to come and visit Aloise many times. What was said is what they saw at Aloise home is true. When I lived with Nyamu we lived with his wife Sadia Nyamu. That Sadia Nyamu did not live with deceased? It is true that when I went to live with the deceased I found Sidia. Sidia had been employed as a teacher. May be that is why she may be have been absent



- when they came. She taught at Muslim Primary School at Nairobi. The deceased lives at Buruburu, Nairobi. Sadia was employed at Muslim Primary School. We stayed with her at the home when I was there. Marriage certificate? I can't say I saw marriage certificate and I never went to his things. The deceased went to India the deceased did not go with Sadia.”
25. On re-examination, he stated that, “I was sworn to tell the truth. What I have told the court the truth and I am a member of Njuri Ncheke and Njuri Ncheke elders do not lie. What I have told the court written and not written is the truth. I did not have any interest in the estate. I only want that children be shown.”
 26. PW6 Angostino Mugambi adopted his witness statement of 29/5/2022 as his evidence in chief. He stated that, “I am a retired officer. I was a school bursar at Mikinduri girls. I retired in 2017. I know Mr. Rintari Nyamu. I knew Nyamu was married. We were in school at the same time. He was ahead of me. He was in form 3 when I was in form 2. He was form 3 in 1974 at Igembe Boys while I was at Burieruri School. Mr. Nyamu was known to me personally. He is married to Sadia Nyamu. I know Mr. Nyamu was married man. When I married he was elder than me but I married before him. I married in 1984 and he married in 1989. Sadia was a student at Mikinduri girls where I was working as bursar. When she finished school that is when they met. He is the one who asked on behalf of Sadia's brother to get a place for her at the school. I know Sadia from the time she came to school. They married after Sadia finished school it was in 1989. I did not know the details but I knew the details that I know they got married. To the best of my knowledge they were married.”
 27. On cross examination, he stated that, “In 1989 I did not go as an elder who went to Sadia's home. I was not part of the delegation. Where did Mr. Mwilaria get the idea from? I was close to Nyamu, he may have thought that I went to Sadia's home. It is not correct that I went to Sadia's home. I am bursar I have not produced any document to show that I was bursar. I became a bursar at Mikinduri on 5th May, 1984. Mr. Aloise asked me to get a place at Mikinduri girls. I do not recall the year but I know she was there for 4 years. Photograph with deceased? We have photographs but I do not have then here. We used to meet Aloise when he came to Meru. I used to be his driver to Nairobi and back. We used to go with him to Nairobi. I used to meet him together with his wife. I never used to go to his home at Nairobi. They were living together. Evidence of Grace that Sadia never lived with deceased? I am not aware.”

Submissions

29. The applicant urges that she has successfully demonstrated that the grant was irregularly issued due to non-inclusion of other beneficiaries and the proceedings leading to the issuance of the grant were defective in substance because an objection to the making of grant lodged by her is still pending hearing. She urges that upon filing the objection, the objector was required to file an answer to the petition and a cross petition, and cites *Re Estate of Nzioka Muathai (Deceased)* (2017) eKLR and *Re Estate of Zubura Salim Dossa – Deceased* (2014) eKLR. She urges that the grant was obtained through making of false statements, concealment from the court of material information and untrue allegations of facts essential to justify the issuance of the grant. She urges that during the viva voce hearing, all the respondents' witnesses admitted that the deceased had taken care of her as if she were his biological daughter, and she is therefore a beneficiary of his estate. She urges that the 1st respondent failed to discharge her burden that she was indeed the wife of the deceased, and cites *Britestone Ptl Ltd v Smith & Associate Far East Ltd* 2007 4 SLR 855, *Njoki v Mathara and Others* Civil Appeal No. 71 of 1989 (UR), *Hortensiah Wanjiku Yawe v The Public Trustee*, Civil Appeal No. 3 of 1976, *Gituanja v Gituanja* (1983) KLR 575, *Kimani v Gikanga* (1965) EA 735 and *Re Estate of Njeru Njagi (Deceased)* (2019) eKLR. She urges that she has satisfied the conditions for revocation of grant as envisaged under section 76 of the *Law of Succession Act*, to warrant the grant being revoked.



30. The respondents urge that there was no will, whether written or oral, and all the attempts by the applicant to the existence of an oral will must fall flat. They urge that the objection by the applicant was an afterthought and a calculated scheme to use the process of this court to drive the 1st respondent from her rightful inheritance. They urge that it was irrelevant whether the 1st respondent had separated from the deceased at the time of his death, as she is a wife within the meaning of section 3 of the Law of Succession Act, and she qualified to apply for letters of administration under section 66 (a) of the Law of Succession Act. They urge the court to dismiss the application and direct the applicant to make an application under section 26 of the Law of Succession Act for provision. They urge that the grant of letters of administration made on 18/8/2021 was properly made and no material has been introduced by the applicant to warrant this court's interference.

Analysis and Determination

31. Before delving into the merits of the case, the court wishes to address the issue of whether objection lodged by the applicant on 8/6/2021 is properly on record.
32. Section 67 of the Law of Succession Act provides that:-
- “No grant, other than a limited grant for collection and preservation of assets, shall be made until there has been published notice of the application for the grant inviting objections thereto to be made known to the Court within a specified period of not less than 30 days from date of publication and the period so specified has expired.”
33. Rule 17 of the Probate and Administration Rules provides for objections, answers and cross-applications as follows:-
- “(1) Any person who has not applied for a grant to the estate of a deceased and wishes to object to the making of a grant which has been already applied for by another person may do so by lodging within the period specified in the notice of the application published under rule 7(4), or such longer period as the court may allow, either in the registry in which the pending application has been made or in the principal registry, an objection in Form 76 or in triplicate stating his full name and address for service, his relationship (if any) to the deceased and the grounds of his objection.”
34. In the case of In re Estate of Mule Kitolo (Deceased) (2017) eKLR cited by the applicant, the court (P. Nyamweya J as she then was) rendered thus:-
- “In addition, Rule 17 sub-rule 11 provides that so long as an objection which has been lodged has not been withdrawn, no grant shall be made by any registry to the estate of the deceased, prior to the expiration of the period for the filing of an answer and cross-application specified by the court under section 68 of the Act. Further, that no registrar shall make a grant if he has knowledge of the existence of an effective objection lodged in any registry in respect of the estate of the deceased.”
35. The respondents/petitioners duly petitioned the court on 21/1/2021 and the court by a notice dated 8/3/2021, invited the parties to lodge any objections within 30 days. The applicant lodged her objection dated 7/6/2021 on 8/6/2021 long after the 30 days has lapsed.



36. The court cannot therefore be faulted for proceeding to issue the Grant of Letters of Administration Intestate to the petitioners/respondents on 18/8/2021, as no objection had been lodged within the prescribed time. The proper course of action would have been for the applicant to seek extension of time to file her objection out of time.
37. The court is empowered by the provisions of Section 68 of *Law of Succession Act* to extend time for lodging objections as follows:-
- “(1) Notice of any objection to an application for a grant of representation shall be lodged with the court, in such form as may be prescribed, within the period specified by such notice as aforesaid, or such longer period as the court may allow. (2) Where notice of objection has been lodged under sub-section (1), the court shall give notice to the objector to file an answer to the application and a cross- application within a specified period.”
38. Having failed to seek extension of time to file her objection out of time, this court finds that the objection dated 7/6/2021 was improperly filed without leave and it is hereby struck out.

Issues for determination

39. The issues for determination are whether there was a valid will, written or oral, and whether the grant ought to be revoked on the basis that the 1st respondent was not a wife to the deceased. The status of the applicant as a daughter of the deceased also arose in contention.

Valid Will

40. Section 8 of the *Law of Succession Act* provides that, “A will may be made either orally or in writing.”
41. Section 9 of the *Law of Succession Act* provides that, “No oral will shall be valid unless— (a) it is made before two or more competent witnesses; and (b) the testator dies within a period of three months from the date of making the will.”
42. In order to gauge whether the deceased made a valid oral will, the court must internalize the relevant testimonies of the applicant, OW2, OW3 and OW4.
43. The applicant testified that, “My father has left me everything together with Elias Mwingiria Nyamu. My father has recognized me as his daughter and I have all the events. My father had an oral will. I pray that the court grants me property that my father left me. According to the wishes of the deceased he did not want Sadia to get anything.” On cross examination, she stated that, “According to the statement of deceased to me and his advocate Kwiranki he did not wish the Sadia get anything. It was oral will. Wishes of deceased were drafted.”
44. OW2 testified on cross examination that, “The copy of the will that I have was not signed. In the will I am not a beneficiary.”
45. OW3 testified that, “Mr. Nyamu was my client until the time he died and I was his lawyer in every way legal matters. We had known each other for 18 years. Wishes of the deceased. He had expressed his wishes but before reducing the wishes not writing into a will he informed me to await so that he would obtain titles to property which were under adjudication in Meru.” On cross examination, he stated that, “There is no written will. He died before the will was reduced into writing. He had called me about 2 weeks before he died and asked to prepare the will.”



46. OW4 testified that, “Mr. Nyamu told me how he wished his property to be distributed. This was in May, 2020... The deceased told me how his property should be initiated.” On cross examination, he stated that, “He said that the children should get education and everything they needed they should ask Secondina.”
47. Section 3 of the *Law of Succession Act* defines a Will as the legal declaration by a person of his wishes or intentions regarding the disposition of his property after his death, duly made and executed according to the provisions of Part II, and includes a codicil.
48. It is clear from the excerpts of the evidence of the applicant and her witnesses that the alleged oral will by the deceased did not meet the threshold set out under section 9 of the *Law of Succession Act* to qualify as a valid oral will. For instance, OW4 stated that the deceased told him about his wishes on May, 2020 while the deceased died 10/10/2020. That is approximately 5 months before the deceased died. OW3 confirmed that the alleged wishes of the deceased had not been reduced into writing before he died. The other consideration is for the oral will to have been made before 2 competent witnesses. There were no witnesses to the alleged oral will of the deceased, as the wishes were allegedly made to the applicant, OW2, OW3 and OW4 separately at different times and different places.
49. The applicant has averred in her supporting affidavit that the deceased had made an oral will within 3 months of his death as per the affidavits sworn on 28/12/2020 by Simion Thuraira Erongi and Benedicta Gatune Simion. The court notes that the said affidavits were not adduced in evidence and the said persons did not testify in court.
50. This court finds that the deceased died intestate.

Revocation of the grant

51. Section 76 of the *Law of Succession Act* sets out the requirements for revocation or annulment of grant as follows:-

“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.”

52. The applicant contends that she is a daughter to the deceased and the 1st respondent was never married to the deceased, and is therefore not a wife. On her part, the 1st respondent contends that she is a wife to the deceased and the applicant is a niece of the deceased.
53. OW1 testified that, “I have been managing the property of the deceased father Aloise Rentare Nyamu...I am the beneficiary. I know Sadia Nyamu. She left home and went away a long time. I know her as girlfriend. My father has left me everything together with Elias Mwingiria Nyamu. My father has recognized me as his daughter and I have all the events...I stayed with Elias Nyamu and Alamin Akwalu who is adopted. The child Elias Nyamu is a child of Sadia Nyamu...I used to live at my house where I worked. When he got sick that is when I went to live with him so that I could take care of him...I stayed there with my father and Elias until his death of my father. Sadia never visited us. When our father got sick and went to India he used to call me from India. I have never seen Sadia come to visit my father.” On cross examination, she stated that, “...Mr. Aloise Rintari is not my biological father. But I was brought up by the deceased. He accepted me as his daughter...The deceased did not have brothers...She was not divorced. She was not married...According to the statement of deceased to me and his advocate Kurauka he did not wish the Sadia get anything. It was oral will. Wishes of deceased were drafted.”
54. OW2 stated on cross examination that, “...I know Secondina Kanini Nyamu (objector). She is adopted daughter of the deceased. She was the daughter. She was not biological daughter...Divorced former wife for 16 years ago. The statement is supported by letter of Father Gitonga of 12th January, 2021. I do not have the letter of Father Patrick Gitonga...The letter of 12th January, 2021 was calling Mr. Nyamu to receive the Holy Communion having been sustained that he was single. Is the letter 12th January, 2021 a divorce letter? No. It is not a divorce letter. Aloise was single. I do not have evidence that he was married. My statement in paragraph 5 is referring to the letter dated 12th January, 2021 by Father Patrick Gitonga Nyaga. Draft Will? I have a draft will but I did not carry it...The copy of the will that I have was not signed. In the will I am not a beneficiary...I know the children of the deceased as 1. Secondina Kanini 2. Elias Mwingirwa 3. Priscilla Kathekia. I do not know of any other children. I have never heard of Imran Nyamu.”
55. OW3 testified that, “I had known the deceased from 2002 when I practiced with Karu Kuria and Kirundaro Associate. I was assigned his matters and when I started my law firm in 2002. Mr. Nyamu was my client until the time he died and I was his lawyer in every way legal matters. We had known each other for 18 years. He told me that he did not have a wife because they had separated with the 1st petitioner...All along he told me that Secondina was his daughter and they were actually doing much of working together.” On cross examination, he stated that, “...At the time of death he was single. He confirmed to me that he had a relationship with the 1st petitioner. He did not give me the details...Mr. Nyamu stayed with the Personal Assistant until the date of his death.” On re-examination, he stated that, “...All along he was saying he had parted ways with the 1st petitioner and he had no intentions to reunite with her.”
56. OW4 testified that, “I know the deceased from 2016...I lived with him at Buruburu, Nairobi. I used to make food for him and two children. Elias Mwingira and Alamin Ahmed...I did not know Saidia Nyamu. I used..... for food and also to cook for Secondina. I knew Secondina as the daughter. I never saw Sadia Nyamu.”



57. The 1st respondent testified that, “...I got the name Nyamu from the deceased my husband. Marriage with deceased, Mr. Nyamu married in 1990 according to Meru Customary Law because he was a Christian and I was Muslim. We agreed to live together as husband and wife because when two solid faith in a home working can separate. We had much differences at the marriage but we never divorced. We have 2 children together. I took a child from my brother whom the mother was into alcoholic. My husband is the one who made all the arrangements for his fathering of my brother’s child. He calls me the mother until today. I have never been divorced...Secondinah is a niece to the deceased. She is not the daughter of the deceased.” On cross examination, she stated that, “...Meru name Nyamu is a common name in Meru. It is my evidence that I carry the name Nyamu to show I was married to the deceased...I did not tell Secondinah about the petition because she is a niece of the deceased. I was married in the funeral programm. I was obituary I was also involved and I use it as my evidence. The children of the deceased biological are 3. The other children are the children which he assisted. The deceased and I used to assist Secondina on education her together with many others.”
58. The 2nd respondent testified that, “...As far as I understand Secondina is a niece just like I am a nephew but son and daughter of the mother to the deceased...Sandia is the wife. I met Sadia very long ago in my life. They have children together...I do not have any interest in the estate.” On cross examination, he stated that, “...I am aware of Meru Customs Law...am aware that she married customary. Many people were there. I was not there. I am aware had some of them are alive.”
59. PW3 testified that, “...I know Aloise Rintari. He is my elder brother. He was my step-brother. My father had 2 wives. My brother was married to Sadia Nyamu. They had 2 children. He got married when I was four years (4). Late 1980’s.” On cross examination, she stated that, “...It was a customary marriage...There were photographs in their house. It was a traditional wedding. My brothers and others went. My brothers and my parents knew...I know James Mugambi. He is a first cousin who is very close to us. He is first cousin to the deceased...It is true they were not living together at the time. They had issues...Secondina was not living together with deceased. I did not know who he was living with the last years. He was in Meru and I was in Nairobi. I don’t know who he was living with.”
60. PW4 testified that, “...My brother was married to Sadia Abdi who later became Sadia Nyamu they have children. The marriage was in 1989 December when we went with local wazees. We took a bunch of Miraa to her family. I went with elders, James, Mukabia, Kairethi, Mbai, Mwituria, Thiringi. I was the one who carried to bunch of miraa to present to the in-laws and was in accordance with Meru Customary Law. My brother was married to Sandia. I do not know of any other wife upto to the time he died. He was stanch Christian and he could not have taken another wife.” On cross examination, he stated that, “I attended the customary ceremony of Sandia and Aloise. Having the elders were there to be a young men that was me. The other elders have died. This happened in December 1989...At the time of death, the deceased was living with Sadia Nyamu. I never heard of any separation between the two.”
61. PW5 testified that, “...I know deceased Aloise Nyamu. He is my brother. I know Mr. Aloise was married. I am the one of the persons who went to take Miraa to the girl’s home. I was one of the elders this was about 1989. I know that Nyamu did not have any other wife at the time of his death. He only had Sadia Nyamu.” On cross examination, he stated that, “...When I went to take miraa to Sadia’s home. I was attending as an elder...After that occasion we were with Mugambi, James Muketha, Venecio, Vai Kailikia, Karicho who was a young boy.”
62. PW6 stated that, “...Mr. Nyamu was known to me personally. He was married to Sadia Nyamu.”

Legal status of the applicant



63. A spouse is defined under section 3 of the *Law of Succession Act* to mean a husband or a wife or wives recognised under the *Marriage Act* (No. 4 of 2014); and the same section defines wife to include a wife who is separated from her husband and the terms "husband" and "spouse", "widow" and "widower" shall have a corresponding meaning." Consequently, the premium placed by the applicant on evidence of separation of the deceased and the 1st Petitioner is unnecessary.
64. Section 2 of the *Marriage Act* defines a spouse to mean a husband or a wife.
65. Section 3 (5) of the *Law of Succession Act* provides specially for the customary law wife and her children that: "Notwithstanding the provisions of any other written law, a woman married under a system of law which permits polygamy is, where her husband has contracted a previous or subsequent monogamous marriage to another woman, nevertheless a wife for the purposes of this Act, and in particular sections 29 and 40 thereof, and her children are accordingly children within the meaning of *this Act*."
66. This court finds that the 1st Petitioner/respondent has established, on a balance of probabilities, that she was married to the deceased under Kimeru Customary Laws, as the brothers of the deceased PW4 and PW5 took dowry to the 1st respondent's home and his sister PW3 and close friend PW6 testified to their married life together. It appears that at sometime in the course of their marriage the parties separated but there was definitely no divorce between the two, and 1st petitioner remained a wife for purposes of the Law of Succession. Evidence by a letter of 12/1/2021 by a priest Father Gitonga allowing the deceased 'to receive holy communion having been satisfied that he was single' is of no consequence as it did not amount to a resolution of marriage.
67. The significance of dowry payment as a form of proof customary marriage has a statutory underpinning. Section 43 of the *Marriage Act*, provides that:
- "(1) a marriage under this Part shall be celebrated in accordance with the customs of the communities of one or both of the parties to the intended marriage.
 - (2) Where the payment of dowry is required to prove a marriage under customary law, the payment of a token amount of dowry shall be sufficient to prove a customary marriage."
68. It is discernable from the evidence on record that the 1st respondent is a wife of the deceased within the meaning of section 3 of the *Law of Succession Act* and a spouse within the meaning of section 2 of the *Marriage Act*. She was never divorced from the deceased, and therefore she is still a wife, her alleged separation from him notwithstanding. She testified that she assumed her deceased husband's name Nyamu and she was described in the obituary as a wife. She has adduced an affidavit of marriage and the 2 birth certificates of her children which bear the name of the deceased as their father. On a balance of probability, the court on the evidence finds it more likely than not that the deceased was married to the 1st Petitioner/respondent and the two had two children together.

Legal status of the Applicant

69. As for the applicant, it is clear that she is a daughter to a sister to the deceased namely Colleta Kirito Rintari, and is therefore a niece to the deceased.
70. In her testimony, the applicant referred to the 2nd petitioner as a member of her grand-father's family when she stated that, "I have worked at the office of James Mugambi. I have known him as a family member of my grandfather's home. I only know him from my grandfather's family."



71. The applicant referred to several witnesses in her testimony, but surprisingly, none was called to testify. She stated that, “My witness Colleta Kirito Rintari is a sister to Aloise Rintari Nyamu the deceased herein. My witnesses, my auntie Benedicta Gaturia, Charity Kiruru and Ncekei, Elizabeth and the deceased are siblings. The deceased did not have brothers.”
72. She further stated that the deceased had no brothers, but when PW3, PW4 and PW5, the sister and brothers of the deceased, testified, they were not cross-examined on their relationship with the deceased, and thus their evidence remained uncontroverted. Their core evidence was that the deceased had married the 1st Petitioner under Meru Customary Law in December 1989 and that he did not have any other wife.
73. Section 29 of the *Law of Succession Act* provides that;
- “29. For the purposes of this Part, “dependant” means- (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) where the deceased was a woman, her husband if he was being maintained by her immediately prior to the date of her death.”
74. The petitioner obviously qualifies under category (a) as “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”. The applicant has to prove that she is a dependant of the deceased by evidence that she was not being maintained by him prior to his death because her case that she was a daughter was disproved on the evidence.
75. However, in the respectful view of this Court, as this was not an application for provision for dependants, on interpretation of section 29 (b) of *the Act*, it is open to the Objector to demonstrate that she qualified to be treated as a child of the deceased if it could be shown that she, together with her sister as claimed, qualified in the category of “children whom the deceased had taken into his family as his own”. The description of the applicant as a daughter of the deceased in the Obituary and the Kenya Alliance Insurance Company Limited immediate annuity policy, while not, of themselves, sufficient proof that she was his daughter for purposes of section 29 of the *Law of Succession Act*, they may in connection with other evidence show how the deceased had treated the Objector (and her sister) as his children.

Conclusion.

76. This court finds that the rightful beneficiaries of the deceased herein are the 1st respondent, as the wife, and her two children namely Elias Mwingirwa and Imran Nyamu. The objector would be entitled to move the court for provision of a dependant in accordance with section 26 of the *Law of Succession Act*, where it can be shown in terms of section 29 (b) of the Act that she fell within the category of “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”.
77. It is this court’s finding that the applicant has not met the threshold laid down under section 76 of the *Law of Succession Act* to justify grant of the orders sought. Needless to state, under section 66 of



the *Law of Succession Act*, a wife ranks high in priority as compared to a niece of the deceased, as the evidence clearly portrayed the Objector. There was, therefore, no obligation for the 1st respondent to seek and obtain the consent of the applicant, before she commenced these proceedings.

78. The Court has also found that there was no evidence of a valid will of the deceased, whether oral or written. Consequently, the estate falls to be administered and distributed in accordance with the law of intestate succession. Section 35 of the *Law of Succession Act* is applicable for the distribution of the estate in the circumstances of this case.

Appropriate Reliefs

79. There was no application for provision before the court and, consequently, the finding in this judgment does not prevent the Objector or any other person so entitled to move the court for provision as a dependant under section 26 of the *Law of Succession Act*.
80. For this reason, on its own motion, pursuant to section 76 of the *Law of Succession Act*, in the interest of good administration in view of the fact that the Objector has physical custody of the deceased's son, Elias Mwingirwa, and taking note of the Objector's possible interest as a dependant, the Court will appoint her as a co-administratrix to join with the 1st Petitioner. The appointment as administrator of the 2nd Petitioner, a nephew of the deceased, who does not lay any claim to the estate of the deceased, will be revoked. The administrators will have in accordance with section 83 of *the Act* a duty to complete administration and final distribution of the estate.
81. The administratrixes jointly, or either of them, will file an application for confirmation of Grant, with the other administratrix in the case of application by one of them, filing a Protest to be heard and determined by the court in accordance with the Probate and Administration Rules. As she may be advised by her legal advisors, the Objector may, however, before the Grant of Letters of Administration is confirmed, in terms of section 30 of the *Law of Succession Act*, make an application under section 26 of *the Act* for provision of dependants.

Orders

82. Accordingly, for the reasons set out above, the Objector/applicant's Summons for Revocation dated 12/10/2021 is without merit and it is hereby dismissed.
83. The estate of the deceased falls to be administered and distributed on the basis of intestate succession there having been no will, written or oral, proved by the Objector.
84. The Court appoints the Objector as a co-administratrix to act as such jointly with the 1st Petitioner, and the appointment of the 2nd Petitioner as a co-administrator is revoked.
85. The Administratrixes shall jointly, or either of them, within six months hereof move the Court for confirmation of the Grant, with the other administratrix where application is by one of them, filing a Protest for determination by the Court in accordance with law, without prejudice to the right of the Objector, as permitted under section 30 of the *Law of Succession Act* to bring a prior application for provision of dependents under section 26 of *the Act*.
86. Each party to bear its own costs.
87. Mention for compliance on 11/11/2024.

Order accordingly.

DATED AND DELIVERED THIS 8TH DAY OF MAY, 2024.



EDWARD M. MURIITHI

JUDGE

APPEARANCES

Mr. Musyoki advocate for Petitioner.

Mr. Onger Advocate for the Respondent.

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