



REPUBLIC OF KENYA



**In re Estate of Samuel Ngung'a Mwangi (Deceased) (Succession Appeal
2 of 2021) [2023] KEHC 1767 (KLR) (14 March 2023) (Judgment)**

Neutral citation: [2023] KEHC 1767 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MURANG'A
SUCCESSION APPEAL 2 OF 2021**

J WAKIAGA, J

MARCH 14, 2023

BETWEEN

HELLEN WANJIRU MWANGI APPELLANT

AND

MARGARET NYAMBURA WAINAINA RESPONDENT

*(Being an Appeal against the judgment delivered by
Hon. E.M. Nyagah in Succession Cause No. 408 of 2019)*

JUDGMENT

1. The Appellant was the Petitioner in Succession Cause No 408 of 2019 while the Respondent was the Objector/Protestor to the application for a Confirmation of Letters of Administration issued on June 23, 2020.
2. By summons under Section 26 of the *Laws of Succession Act*, the Respondent applied to be given LOC 2/MAIRI/152, LOC 2/MAIRI/T27 and Plot 197/11A MAIRI as a Dependant of the deceased on the grounds that she had cohabited with him from the year 2001 until his demise in the year 2019 and that the deceased had given her around 5,000 tea bushes which she had been cultivating and utilizing in land Parcel No LOC 2/MAIRI/152.
3. Directions were issued that the Objection be heard by way of oral evidence at which hearing the objector presented three (3) witnesses and closed her case.
4. This Appeal arises out of these proceedings where the objector closed her case and the record does not show that the Petitioner presented her case as at the time of this Ruling thereon dated March 16, 2021 in which Court found for the Respondent as a dependant.
5. Being dissatisfied with the said Ruling the Appellant filed this Appeal and raised the following grounds of appeal: -



- a) The learned Magistrate erred in law and in fact in declaring, that the Respondent herein is a wife and hence a dependant in the estate of Samuel Ngung'a Mwangi.
 - b) The learned Magistrate erred in law and in fact and failed to appreciate the customary marriage between the deceased and the Respondent was void and he was still married to the Appellant.
 - c) The learned Magistrate erred in law and in fact in failing to allow the Appellant and her witnesses adduce their evidence in Court and determine the matter devoid of due weighty factual and legal considerations in support of Appellant's cause.
 - d) The learned magistrate erred in law and in fact by failing to partly or wholly consider the contents of the Appellant's Replying Affidavit as deponed and submissions filed which justifies her position thereby rendering the Appellant being disentitled to her due share of the estate.
 - e) The learned Magistrate erred in law by failing to consider the material circumstances of the case and thus arrived at the wrong conclusion.
6. This being a First Appeal the Court is required to re-evaluate and re-assess the record of the proceedings and from the record herein it is clear that the Petitioner did not tender in evidence to challenge the objector's contentions and the record of proceedings does not show that the same who was represented by an Advocate indicated that she did not intend to call witnesses to enable the Court give directions on the filing of submissions whereas there were already Witness Statements filed by the same.
 7. In so proceeding the Court fell into error and since the right to fair hearing is a Constitutional right and having found that the same was not heard, I hereby allow the Appeal set aside the Ruling dated March 16, 2021 and the proceedings leading to the same before Hon. E.M. Nyagah.
 8. The Application dated July 3, 2020 be to heard on merit by another Magistrate other than Hon. E.M. Nyagah.
 5. The mater to be placed before Chief Magistrate for allocation to another Magistrate and directions thereon.
 6. This being a family matter, there is no Order as to costs.
 7. Mention before the Chief Magistrate on 27th April, 2023.

DATED AND SIGNED AT MURANG'A THIS 14TH DAY OF MARCH 2023.

J. WAKIAGA

JUDGE

In the presence of:

Mr. Njoroge Mbugua for Applicant

Mr. Mwaniki for the Respondent

Ms Caroline Mutahi – Court Assistant

