



REPUBLIC OF KENYA



**In re Estate of Agnes Nyaboke Samuel (Deceased) (Succession Cause  
263 of 2011) [2023] KEHC 19457 (KLR) (4 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 19457 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
SUCCESSION CAUSE 263 OF 2011  
HK CHEMITEI, J  
JULY 4, 2023**

**BETWEEN**

**WILKISTER BWARI ONGENDI ..... 1<sup>ST</sup> APPLICANT**

**MARIA MORAA NYABATE ..... 2<sup>ND</sup> APPLICANT**

**AND**

**GRACE MORAA MAGETO ..... RESPONDENT**

**RULING**

1. In their application dated August 23, 2022 the applicant has asked this court to revoke the grant issued to the respondent on September 19, 2011 and confirmed on May 18, 2012 on the grounds that the same was granted to the applicant who had concealed material facts namely that the deceased had other dependants and or beneficiaries.
2. The supporting affidavit sworn on the same date indicates that the deceased left behind one Nereah Nyangate Onyari, Grace Moraa Mageto and Naomi Kerubo Okindo respectively as her daughters.
3. She went on to state that the second applicant Maria Moraa Nyabate was married by the deceased as her 1<sup>st</sup> wife under the tenets of woman to woman marriage under Kisii customary laws. That Joyce Moraa Nyabate was her second wife.
4. She went on to state that the deceased subdivided land parcel number Subukia /Subukia Block 3/16 equally between her two wives.
5. She went on to state further that she learned that the respondent had filed suits namely Nakuru CM ELC no 197 of 2021 and 218 of 2021 seeking to stop burials of some family members on the said parcel of land.



6. When the matter came up for hearing one Mr Bosire advocate sought for more time to file the response on behalf of the respondent. The court on 13<sup>th</sup> December 2022 granted him 14 days to file and serve but as at 16<sup>th</sup> February 2023 there was no response from the respondent.
7. The court has perused the record and it appears that there was another application dated September 2, 2014 by other beneficiaries but it is still pending.
8. Be it as it may, this court finds that although the application herein is unopposed it appears that the deceased married two wives under the Kisii customary law and which allows woman to woman marriage. It also appears that she divided the land into two among his two houses.
9. In the absence of any contrary perspective it is evident that the respondent was issued with the grant without her disclosing that the deceased had another family. The fate of the burial disputes matters mentioned above was not disclosed to the court but it leads to an irresistible conclusion that there must be a land dispute between the respondent and the rest of the family members.
10. In the premises, this court finds the application meritorious, the same is allowed and the grant issued to the applicant on September 19, 2011 and confirmed on `May 18, 2012 is hereby revoked with attendant consequences. Land parcel number Subukia /Subukia Block 3/16 hereby reverts to the estate and in the name of the late Agnes Nyaboke Samuel.
11. The applicants shall have the costs of this application.

**DATED SIGNED AND DELIVERED VIA VIDEO LINK AT NAKURU THIS 4TH DAY OF JULY 2023.**

**H. K. CHEMITEI**

**JUDGE**

