



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re Estate of JNW (Deceased) (Succession Cause E1002 of 2022)  
[2025] KEHC 13242 (KLR) (Family) (26 September 2025) (Judgment)**

Neutral citation: [2025] KEHC 13242 (KLR)

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

**FAMILY**

**SUCCESSION CAUSE E1002 OF 2022**

**PM NYAUNDI, J**

**SEPTEMBER 26, 2025**

**IN THE MATTER OF THE ESTATE OF JNW (DECEASED)**

**JUDGMENT**

1. This matter relates to the estate of JNW who died intestate on 19<sup>th</sup> January 2022. The deceased is said to have died unmarried and without children. PMW petitioned for letters of administration of grant intestate in her capacity as the mother of the deceased. The grant was issued to her on 8<sup>th</sup> November 2023. The said grant was confirmed on 26<sup>th</sup> February 2024.
2. The deceased is said to be survived by the following persons;
  - i. AWK- father.
  - ii. PMW- mother.
  - iii. RMW- sister.
3. The deceased had the following properties;
  - a. Motor Vehicle Registration Number KCS XXX V.
  - b. Motor Vehicle Registration Number KCX XXX Q.
  - c. Motor Vehicle Registration Number KCE XXX G (Proceeds of payments by insurance from APA Insurance resulting from an accident.)
  - d. Motor Vehicle Registration Number KCN XXX G.
  - e. Motor Vehicle Registration Number KAB XXX F.
  - f. Hardware shop along Kangundo Road, Nairobi.
  - g. Equity Bank Account.



- h. ABSA Account.
  - i. Cooperative Bank Account.
  - j. Kingdom Bank Account.
  - k. Bank of Africa.
4. PWN (the Applicant) then filed summons for revocation of grant dated 21<sup>st</sup> August 2024 seeking the following orders;
1. Spent.
  2. Spent.
  3. That this Honourable Court be pleased to revoke and/ or annul the Grant of Letters of Administration Intestate issued to the Respondent, PMW in respect to the Estate of JNW.
  4. That a Grant of Letters of Administration Intestate be issued to PWN, the Applicant herein.
  5. That this Honourable Court be pleased to issue any other orders as the court may deem fit and just to grant in the circumstances of this case to prevent plunder and/or waste of the estate of JNW by the Respondent, PMW.
  6. That the costs of this application be provided for.
5. The summons premised upon Section 76 of the *Law of Succession Act*, Cap 160 of the Laws of Kenya and Rule 44 of the Probate & Administration Rules and was supported by the Affidavit of even date sworn by the Applicant/Objector.
6. The Respondent opposed the summons through her Replying Affidavit sworn on 10<sup>th</sup> October 2024.
7. The summons was canvassed by way of viva voce evidence.

#### **Evidence.**

8. OW1, PWN testified on 10<sup>th</sup> March 2025. She asked the court to adopt the summons for revocation and her supporting affidavit as her evidence in chief. Her evidence was that she and the deceased got married in 2018. Their marriage was blessed with one child. The DNA results prove that the deceased was the minor's father. During the subsistence of their marriage, they acquired properties together including the hardware shop she is running. She argued that she was the deceased's wife and not an employee. She asked the court to revoke the grant and a provision be made to her and the child.
9. During cross-examination, she stated that she had sued the deceased in the children's court where the court directed that a DNA test be conducted. All the parties were present when the samples were taken from the deceased at Kenyatta National Hospital. However, they were not present when the samples were taken from the minor. Her child was born in June 2022. She has not met the administrator after the deceased's burial. She did not inform the administrator that she was pregnant with the deceased's child because they were not in good terms. She visited the deceased's home in 2021 with the deceased's friends for introduction. They sought blessings from the deceased's family and the administrator was present. The deceased's father was not present. The visit happened at the maternal home of the administrator. She does not have any witnesses. There was no other visit after that. The deceased visited her auntie's home and her parents were present.



10. She was running the hardware with the deceased which was registered in the deceased's name. after his death, she withdrew around Kshs. 900,000 from the deceased's account after his death because she had access to the accounts even before his death. She did not notify anyone of the withdrawal. The deceased had five vehicles; one was involved in an accident. The administrator put caveats on those vehicles. The vehicles are parked. The medical reports of the deceased do not indicate that she was the deceased's wife. There was a burial dispute and the court ordered that she be involved in the burial. She did not attend the burial. Referring to the chief's letter, she stated that he elders gave the chief in Komarock information about the deceased.
11. During re-examination, she stated that she was open for another DNA. The previous DNA was done at the Government Chemist and she paid for it. The deceased's parents were separated and that's why they visited the maternal home of the deceased's mother. The vehicles are at a car yard. She has the original log books of the vehicles. She withdrew money from the deceased's account to pay outstanding bills. She transferred Kshs. 500,000 to the deceased's account. She was in possession of the deceased's ID, birth certificate, logbooks, ATM Cards and cheque books. She was not aware that a petition was filed in this court. She was heavily pregnant and could not leave the house. The deceased fell ill on 8<sup>th</sup> December 2021. He developed complications and he was readmitted on 12<sup>th</sup> December 2021 and was in hospital until he died. She is a dependant on the deceased's NHIF card.
12. PW1, PMW asked the court to adopt her affidavit dated 10<sup>th</sup> October 2024 as her evidence in chief. She denied that the applicant and the deceased visited her home. She lodged a caveat against the vehicles. The applicant used the vehicles for two years and returned them when they stopped operating. The DNA test was not conducted in her presence. The Applicant did not inform her when the child was born.
13. During cross-examination, she stated that the applicant was an employee of the deceased. She did not recognise her as the deceased's spouse. The applicant was not often at the business when she visited her son. The burial dispute was filed on 25<sup>th</sup> January 2022. She put up the hardware business with the deceased and her daughter. The ceremony at her home was for her dowry payment by her husband. The applicant was not present. The deceased paid his hospital bill.
14. In the lower court file, she sought an order that the deceased's properties should vest in her. The deceased was unable to sire children; he was attacked by thugs who mutilated his genital organs. She does not object to the provision of the minor if he is the deceased's son. She asked the court to conduct another DNA test.

### **33 APPLICANT'S SUBMISSIONS.**

15. The Applicant filed written submissions dated 13<sup>th</sup> June 2025. She submitted that the application has met the threshold for revocation of grant as provided under Section 76 of the Succession Act. She sought to rely on the decisions of *Matheka and Another vs Matheka* [2005] 2KLR 455 and *In re Estate of Prisca Ong'ayo Nande (Deceased)* [2020] eKLR which lay down the guiding principles and grounds when a grant can be revoked. In this case, she submitted and argued that there was misrepresentation of facts by the Administrator in failing to include her and the minor as beneficiaries of the Deceased and is a ground for revocation of the grant. She relied on the decision of *In re Estate of M'chokera M'ramare (Deceased)* [2019] eKLR.
16. Lastly, she further submitted that consent from the excluded beneficiaries was not obtained when the petition was filed as required under Rule 26 of the Probate and Administration Rules.



## RESPONDENT/ADMINISTRATOR'S SUBMISSIONS.

17. The administrator's submissions are dated 9<sup>th</sup> June 2025. The Respondent submitted that the applicant had failed to prove any existence of a marriage between her and the deceased under Section 59 of the *Marriage Act* of 2014. No customary marriage was conducted as alleged by the applicant and at no point did she visit the deceased's home. She argued that the applicant's status in the trial court was not determined in the burial dispute. The body was released to the deceased's family and the court ordered that she should be involved in the burial. However, the applicant, did not even attend the deceased's burial. Having failed to prove that she was the deceased's wife, she did not fall under the definition of a dependant under Section 29 of the *Law of Succession Act* hence there was no need to seek consent from her when filing the petition. The Respondent further submitted that a letter from the chief was not proof of an existence of a marriage. This was the holding in *ASA v NA & another* [2020] eKLR.
18. It was the Respondent's submission that the paternity of the child allegedly belonging to the deceased had not been established. The trial court in the burial dispute ordered the parties to have samples from the deceased be extracted and a DNA test be conducted. However, after the samples were extracted, the applicant did the DNA test without involving the Respondent. The results of the DNA test were not shared with her.
19. She accused the applicant of intermeddling with the deceased's estate by withdrawing funds close to Kshs. 1 million before the petition was filed. In the end, she argued that since the grant has been confirmed and the estate has been distributed, this court has become functus officio. Reliance was placed in the case of *In re Estate of Ernest Kerry Komo (Deceased)* [2016] eKLR.
20. She urged the court to find that there was no misrepresentation of facts and that the grounds for revocation of grant under Section 76 of the *Law of Succession Act* have not been met.

## ANALYSIS AND DETERMINATION

21. The critical issues for determination are;
  - i. whether the applicant and the minor were beneficiaries of the estate of the deceased.
  - ii. whether the court should revoke the grant.
22. On the first issue, the applicant in her evidence argues that she was the deceased's wife. Her evidence was that she visited the deceased's home for purposes of introduction. In her cross examination she states that she visited the maternal home of the Respondent who is the deceased's mother. She told the court that she did not have witnesses who visited the home with her. she also confirms to the court that no ceremony took place and no dowry was paid. She stated that the deceased visited her auntie's home and her parents were in attendance. She told the court that she did not attend the deceased's burial.
23. On the other hand, the Respondent denies that the deceased ever introduced the applicant to her as a wife. She also denied that the applicant visited the deceased's home. She told the court that the applicant in the burial dispute abandoned the suit and did not participate and therefore, her position as the deceased's wife was not established.
24. Although the applicant stated that there was a ceremony, no details are given at all as to when this happened and the specific customary law rites that were performed.
25. The requirements of a Kikuyu customary law marriage are very well documented in such texts as the *Cotran's Restatements* and *Jomo Kenyatta's Facing Mount Kenya*. The requirements are also stated in



several cases such as Gituanja -vs- Gituanja (1983) KLR 575, Case -vs- Ruguru (1970) EA 55, Muigai -vs- Muigai (1995-1998) EA 207, Peter Hinga -vs- Mary Wanjiku Nairobi HCCA No. 94 of 1977 and Zipporah Wairimu Muchemi -vs- Paul Muchemi Nairobi HCCC No. 1280 of 1970, among others. The critical ceremonies are the performance of ngurario and ruracio. The evidence placed before me does not establish that these all important ceremonies were performed. I am not convinced that the applicant was a customary law wife of the deceased. The letter of the Chief will not avail her any recourse as he simply states that they were in a come we stay union which is not a recognised form of marriage.

26. On the issue whether the minor was a child of the deceased, I have looked at evidence presented by the applicant. There are receipts showing payment for the DNA test by the applicant. The DNA test results presented before court are inconclusive; it does not show which laboratory conducted the tests and the results of that test. There is no report indicating the findings of the test as regards the paternity of the minor. Even worse the report does not confirm that samples were extracted from the minor and the deceased.
  27. It is regrettable that the applicant adopted a casual attitude towards her responsibility to establish the paternity of the minor as alleged. Although the Court is charged with the responsibility of safeguarding the rights of the child, to her identity and her inheritance, it can only do so within the confines of the law. Sitting as a probate Court, I am also required to ensure that only the rightful beneficiaries obtain a share of the deceased estate. I must lock out those who are unable to establish their interest.
  28. The Applicant suggests that she is prepared to undergo another DNA test. This would mean exhuming the remains of the deceased, he was interred more than 5 years ago. I am persuaded by the reasoning of the Court in the decision of re Estate of MKK (Deceased) (Succession Cause 387 of 2012) [2024] KEHC 13494 (KLR) (6 November 2024) (Ruling) where the Court cited degradation of the body, high costs of exhumation and likely trauma of the relatives of the deceased as grounds for refusal for the order of DNA testing after passage of a long period of time after the burial of the deceased.
  29. Consequently, having found that the Applicant was not a wife and it is not proved that the minor was a child of the deceased, I dismiss the Summons for revocation of grant dated 21<sup>st</sup> August 2024 in its entirety.
  30. Each party will bear their own costs.
  31. Parties granted leave to exercise right of appeal within 30 days.
- It is so ordered.

**SIGNED DATED AND DELIVERED IN VIRTUAL COURT THIS 26<sup>th</sup> DAY OF SEPTEMBER, 2025.**

**P. M NYAUNDI**

**HIGH COURT JUDGE**

In the presence of:

Fardosa Court Assistant

Ms. Kiiru for Applicant

Gakaria for Respondent

