



REPUBLIC OF KENYA



**In re Estate of the Sagony Kibiego (Succession Cause E228 of 2007)
[2025] KEHC 13265 (KLR) (25 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 13265 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE E228 OF 2007
RN NYAKUNDI, J
SEPTEMBER 25, 2025**

IN THE MATTER OF THE ESTATE OF THE SAGONY KIBIEGO KIPKOECH

BETWEEN

**TAPYOTIN KIPKOECH 1ST OBJECTOR
FRANCIS KIPTOO KOECH 2ND OBJECTOR
JOSEPH KIPTARUS KOECH 3RD OBJECTOR**

AND

ESTHER JEMUTAI KOECH PETITIONER

RULING

Representation

M/s Chepseba Lagat & Associates

M/s Tororei & Co. Advocates

1. What is before this court for determination is summons for revocation dated 2nd September, 2014 expressed under the provisions of 76 of the *Law of Succession Act* and Rule 44 of the Probate and Administration Rules in which the applicants seek orders as follows:
 - a. Spent.
 - b. The Grant of letters of administration intestate in the estate of the late SAGONY KIBIEGO KIPKOECH issued to ESTHER JEMUTAI KOECH on 1st August, 2008 and confirmed on 9th June, 2009 vide Succession Cause No. 288 of 2007 be revoked or annulled.



- c. Pursuant to the granting of prayer (a) above, the title deed issued to the petitioner for land parcel number Uasin Gishu/Elgeyo Border/206 be cancelled and the title therefore be revert back to the name of the deceased.
 - d. There be a restriction over the land parcel No. Uasin Gishu/Elgeyo Border/206 pending the hearing and determination of the application.
 - e. Costs of this summons be awarded to the objectors/applicants.
2. The grounds advanced to the summons are that:
 - a. The petition for Grant of letters of administration intestate and the proceedings to obtain the grant were defective substance.
 - b. The grant was obtained fraudulently by using an incompetent letters by the assistant chief who gave false information regarding the beneficiaries of the deceased fraudulently gave consent to the petitioner to petition to letters of administration.
 - c. The petitioner in collusion with the assistant chief gave the court false information that she is the only beneficiary.
 - d. The grant was obtained through concealment of the material facts.
 - e. The petitioner did not disclose that the deceased left behind the 1st Objector being widow, 2nd objector and 3rd objector being his sons.
 - f. The grant was obtained secretly and without the knowledge, notice consent or involvement or consent of the rightfully beneficiaries.
 - g. The petitioner used the Grant and the confirmation obtained falsely therefore to transfer the title for land parcel number Uasin Gishu/Elgeyo Border/206 into her name.
 - h. The petitioner is clearly minded to deprive the rightful beneficiaries including the objectors herein of their rightful inheritance as the property constitute family land where the objectors are bonafide.
 - i. That had the petitioner made full disclosure, this honourable court could not have issued here with a grant without the participation of other beneficiaries.
3. In support of the summons, the applicants through Tapyotin Kipkoech swore a supporting affidavit in which she stated as hereunder:
 - a. That I am a female adult hence competent to swear this affidavit.
 - b. That the deceased is my husband.
 - c. That the above named Sagony Kibiego Kipkoech died on 2nd May, 1999 and Grant of letters of administration was made to Esther Jemutai Koech by this honourable court on 1st August, 2008.
 - d. That the said Grant was obtained fraudulently, secretly and by concealment of material facts on the part of the petitioner as demonstrated below:
 - i. The petitioner failed to disclose that parcel of land Uasin Gishu/Elgeyo Border/206 constitute was owned by my husband who left behind myself, and the 2nd amd 3rd objectors being my sons.



- ii. The petitioner failed to disclose that the estate had other beneficiaries including me, the 2nd and 3rd applicants.
 - iii. The petitioner did not inform or notify us as beneficiaries when making the application for grant of letters of administration intestate and or during the confirmation proceedings.
 - iv. The petitioner failed to notify any of the beneficiaries for purposes of nominating a co-administrator(s) to protect beneficial interests.
 - v. The petitioner did not obtain a consent or authority of other beneficiaries to petition for Grant or the estate of the deceased.
 - vi. The letters by the area assistant chief which the petitioner used to obtain the Grant is incompetent and defective as the said Assistant chief went beyond his powers and said that we had decided to give the said land to the late Philip Koech (which is untrue).
 - vii. The petitioner failed to disclose that there is a dispute over the property land parcel number Uasin Gishu/Elgeyo Border/206.
- e. That we wish to state further as follows:
- i. In the petition and application for confirmation the petitioner omitted our names as the beneficiaries. I being the deceased's wife, 2nd and 3rd objectors being sons of the deceased.
 - ii. As regards the administration of the estate we wish to submit that the grant issued to the petitioner be revoked or annulled and a fresh grant be issued to me and my sons or as the court may appoint.
- f. That in the circumstances, the Grant of letters of Administration and the confirmation therefore is incompetent, fatally defective, bad in law and fit for revocation or annulment.
- g. That petitioner has since used the aid Grant and confirmation to transfer the property Uasin Gishu/Elgeyo Border/206 to herself.
- h. That the title document issued to her through a defective and fraudulent process cannot accord her lawful or good title over the property and I have since lodged a caution to protect our beneficial interests.
- i. That I am apprehensive that the petitioner may fraudulently and unlawfully dispose off, transfer or charge the property to third parties, thereby steal a march on us as the beneficiaries.
4. In response to the summons, the petitioner filed a replying affidavit sworn on 18th September, 2018 in which she deposed as follows:
- a. That I am a female adult of sound mind, competent to depose herein.
 - b. That I am the administratrix of the estate of the late Kipkoech Kibiego Sagony.
 - c. That the deceased died on the 20th March, 2005.
 - d. That I have read and understood the objectors notice of motion dated 2nd September, 2014 and in response thereto aver as follows:



- i. That the said motion and the affidavits thereto is characterized by untrue allegation, is made in bad faith and suitable for summary dismissal.
- ii. That it is not true as alleged, that the 1st objector was the wife of the deceased. No ceremony was ever conducted, under the Keiyo customary law or any other system for that matter to support the allegation.
- iii. That as far as I was made aware by the deceased, the 1st objector was previously married to one Kimutai Kibungei, with whom they were blessed with 2 children, being the 2nd and the 3rd objectors herein.
- iv. That at some point, the said Kimutai Kibungei left for Nandi, and the deceased and the 1st objector illicitly cohabited leading to a son Philip Koech Birir, who is my husband.
- v. That notwithstanding that the 2nd and 3rd objectors lived with the deceased, he never took them in as his sons, and he expressly told them as much.
- vi. That I am aware of my own knowledge that sometimes in early 1999, the deceased availed the original titles and related documents to his son, Philip Koech Birir, to facilitate transfer of the property to the said son.
- vii. That unfortunately, on Sunday the 2nd day of May, 1999, while I was in church with my children, my husband Philip Koech was home together with the 1st and 3rd Objectors was fatally stabbed. The family members taking into account all the factors prevailing prior and during the fateful death, suspect to date the hand of the objectors herein in the death.
- viii. That since the fateful date, the 3rd Objectors vacated the suit premises and have never set foot to date.
- ix. That I lived with the deceased until his untimely demise in 2005.
- x. That the objector never attended to the deceased while he was ailing and neither did they even attend his burial.
- xi. That the present application is only informed by greed for the law.

Evidence

5. The Objectors called three witnesses who gave their evidence as follows:
6. PW1 was Tapyotin Kipkoech who adopted her witness statement dated 28th November, 2018 and stated that she got engaged to the late Kipkoech Kipyego Sagony one year before independence. That she got married under the Keiyo Customary law after independence when she was expecting the 2nd objector Francis Kiptoo Koech. She further stated that together with the husband she on the land known as Uasin Gishu/Elgeyo Border Scheme/206 from 1963 with our children the 2nd and 3rd objector and petitioner's late husband Philip Kipkoech Kibirir until 1999 after the death and burial of her husband. She told the court that Peter Kiplagat alias Kiplalang and the petitioner demolished her house and her co-objectors and her clothes were also burnt.
7. She testified that the 2nd and 3rd objectors and the petitioners together with herself are beneficiaries. that she placed a caution when she realized that the petitioner had fraudulently transferred the suit property being Uasin Gishu/Elgeyo Border Scheme/206 in her favour.



8. On cross examination she stated that she got engaged when Jomo Kenyatta was the president and averred that she gave birth to her first born when Daniel Toroitich Moi was the president. It was her testimony that her parents lived at Kipkati. She reiterated that the engagement ceremony was at Talget and that her parents lived at the neighbouring land at Kapsegem. She further stated that the Koito ceremony was carried out at her father's home.
9. PW2 was Ambrose Kimaiyo Sang who adopted his witness statement and stated that he resides on parcel known as Uasin Gishu/Elgeyo Border Scheme/204 while the objector lived on Uasin Gishu/Elgeyo Border Scheme/206. He further stated that it is within his knowledge that the late Kipkoech Kibiego Sagony is the husband to the 1st objector, Tapyotin Kipkoech. That the petitioner and the 1st objector were not in good terms as son and daughter in-law. That he later learnt that the houses were demolished, and the 1st objector's clothes burnt.
10. On cross examination the witness stated that he could not discuss matter marriage because of the age difference between himself and the late Kipkoech Sagony. He however confirmed that he found the late Kipkoech Kipyego Sagony living with Tapyotin Kipkoech. He testified that the houses of Francis Kiptoo Koech and Joseph Kiptarus Koech were demolished after death of the late Kipkoech Kipyego Sagony.
11. PW3 equally adopted his witness statement and stated that he is the son of the deceased herein and the 1st objector and that his parents lived in Uasin Gishu/Elgeyo Border Scheme/206 since 1963 until 1999 when his father passed away. That upon demise of his father, the petitioner and the assistant chief one Peter Kiplagat alias Kiplalang evicted him, his mother and the 2nd objector. That the petitioner did not disclose that the deceased was married to the 1st objector while the 2nd and 3rd objectors are his sons.
12. On cross examination, the witness stated that he lived on the parcel of land together with Francis Kiptoo Koech until their houses got burnt. He averred that he is the son of the late Kipkoech Kipyego Sagony because the late Kipkoech Kipyego Sagony gave him his name which he used to acquire the identity card. He also pointed out that he was not charged with the murder of Philip Koech Birir (deceased) however he was only remanded for six years. It was his testimony that he was never informed that he is not the biological son of the late Kipkoech Kipyego Sagony.
13. DW1 was Esther Jemutai Koech who testified that she is the daughter in-law of the late Kipkoech Kipyego Sagony having been married to the late Philip Koech Birir (deceased) who died on the 2nd of May, 1999. She stated that the relationship between the late Kipkoech Kipyego Sagony, the 2nd and 3rd objector was constrained because the deceased felt that the 2nd and 3rd objectors are not his biological children.
14. On cross examination, she stated that she got married in the year 1993 and that the late Philip Koech Birir (deceased) was murdered in the year 1999. She also testified that the objectors did not attend the funeral.
15. DW2 was Peter Kiplagat Chebiego who stated that he is a cousin to the deceased and confirmed that the 1st objector was married to the deceased and that they used to live together. He stated that the late Kipkoech Kipyego Sagony lived on the parcel of land known as Uasin Gishu/Elgeyo Border/206 with the objectors whereas he lived on the parcel of land known as Uasin Gishu/Elgeyo Border/214.
16. DW3 was William Bartocho Kandie who testified that he was aware that Kimutai Kibungei was the biological father of the 2nd and 3rd objector. He told the court that the 2nd and 3rd Objectors were never considered as the sons of the deceased.



17. The parties equally filed their written submissions which have been summarized as hereunder:

The Objector's written submissions

18. Learned Counsel Ms. Chepseba started by giving a background of the case and the evidence as it was presented in court. She identified two issues for determination by this court. The first issue was whether there was a marriage between the parties herein. The second issue was whether the Objectors are beneficiaries entitled to inherit from the estate.
19. As to the first issue, learned counsel submitted that the *Marriage Act* Number 4 of 2014 recognizes only four types of marriages: Civil Marriages, Christian Marriages, Customary Marriages, Islamic Marriages and Hindu marriages. Counsel argued that according to the testimony of the 1st Objector, she got married to the late Kipkoech Kipyego Sagony under the Keiyo customary marriage when Jomo Kenyatta was president and averred that she gave birth to her first born when Daniel Toroitich Moi was president. Although the customary marriage was not registered, counsel contended that the 1st Objector and late Kipkoech Kipyego Sagony lived as husband and wife and the society perceived them as such.
20. Counsel drew the court's attention to the case of *Hotensiah Wanjiku Yawe v Public Trustee*, where the court held that long cohabitation as man and wife gives rise to a presumption of marriage and that only cogent evidence to the contrary can rebut such a presumption. Counsel further submitted that for one to prove customary marriage under the Keiyo sub-tribe of the Kalenjin community where the deceased undisputedly belonged, he or she must prove payment of dowry and the evidence thereof, establishment of a matrimonial home and open and lengthy cohabitation, citing Eugene Cortran's *Restatement of African Law Vol. 1*.
21. Ms. Chepseba stated that it was the 1st Objector's testimony that dowry was paid by the late Kipkoech Kipyego Sagony in form of two cows, and that after the ceremony she lived with the late Kipkoech Kipyego Sagony with the 2nd and 3rd Objector in Talket and they utilized the parcel of land known as Uasin Gishu/Elgeyo Border/206.
22. Counsel also relied on the case of *Joseph Gitau Githongo v Victoria Mwhaki*, where the court held that presumption of marriage is a concept born from an appreciation of the needs of the realities of life when a man and a woman cohabit for a long period without solemnizing that union by going through a recognized form of marriage, then a presumption of marriage arises. The court noted that if the woman is left stranded either by being cast away by the "husband," or otherwise he dies, occurrences which do happen, the law subject to the requisite proof, bestow the status of the "wife" upon the woman to enable her to qualify for maintenance or a share in the estate of her deceased "husband."
23. Learned counsel further cited the case of *Njoki v Muthuru Njoki Vs Muthuru* [2008] 1 KLR 288, where Nyarangi JA stated that before a presumption of marriage can arise, a party needs to establish long cohabitation and acts showing general repute. The judge noted that if the woman bears a child or better still children, so that the man could not be heard to say that he is not the father of the children, that would be a factor very much in favor of presumption of marriage, and that performance of some ceremony of marriage would be strong evidence of the general repute that the parties are married.
24. Counsel also referenced *Phylis Njoki Karanja & 2 others v Rosemary Mueni Karanja & another* [2009] eKLR, where the Court of Appeal stated that before presumption of marriage can arise, a party needs to establish long cohabitation and acts of general repute; that long cohabitation is not mere friendship or that the woman is not a mere concubine but that the long cohabitation has crystallized into a marriage and it is safe to presume the existence of a marriage.



25. Additionally, counsel cited the case of MNK v POM; Initiative for Strategic Litigation in Africa (ISLA) (Amicus Curiae) [2023] KESC 2 (KLR), where the court held that when a man and woman cohabited and held themselves out as husband and wife, a presumption of marriage could arise. Under Section 119 of the Evidence Act, a court could presume the existence of any fact likely to have occurred, taking into account the common cause of natural events, human conduct and public or private business in relation to the case.
26. Learned counsel outlined the requirements for a presumption of marriage as set out in the case of MNK v POM, which include: the parties must have lived together for a long period of time; the parties must have the legal right or capacity to marry; the parties must have intended to marry; there must be consent by both parties; the parties must have held themselves out to the outside world as being a married couple; the onus of proving the presumption is on the party who alleges it; the evidence to rebut the presumption has to be strong, distinct, satisfactory and conclusive; and the standard of proof is on a balance of probabilities.
27. Counsel further referenced Mary Wanjiku Githatu v Esther Wanjiru Kiarie [2010] eKLR, where Bosire JA held that in circumstances where parties do not lack capacity to marry, a marriage may be presumed if the facts and circumstances show the parties by a long cohabitation or other circumstances evinced an intention of living together as husband and wife. Counsel argued that the deceased in this case and 1st Objector had lived together for a long period of time, even had children, and the community treated them as husband and wife.
28. On the second issue regarding inheritance rights, learned counsel argued that Article 27(1) to (5) of the Constitution provides for the right to equality and freedom from discrimination. That the operating words were that "the State shall not discriminate directly or indirectly against any person on any ground." Counsel noted that by employing the word "including," it showed that the examples set out were not conclusive and therefore other grounds of discrimination may exist.
29. Counsel argued that even though the Petitioner testified and stated that the 2nd and 3rd Objectors were not the biological children of the late Kipkoech Kipyego Sagony, the same was purely based on hearsay evidence and that the 2nd and 3rd Objectors should not be discriminated against on that basis.
30. Counsel noted that the issue of paternity was raised by the Petitioner, however she didn't file an Application for DNA to determine the paternity of the 1st and 2nd Objectors. Counsel argued that notwithstanding the issue of paternity cannot be raised to victimize the 2nd and 3rd Objectors, yet the same was not raised against the beneficiaries listed by the Petitioner.
31. Counsel emphasized that it was demonstrated by both objectors and petitioners' witnesses that the 1st Objector is the mother to the 2nd and 3rd Objectors and the petitioner's late husband are beneficiaries by dint of the provisions of section 29 of the Law of Succession Act Cap 160 Laws of Kenya. They argued that the 2nd and 3rd Objectors were born during the cohabitation between the deceased and the 1st Objector and the deceased treated them as his own children during his lifetime. Therefore, even if paternity was disputed, they are entitled to benefit from the deceased's estate as dependants.
32. In conclusion, learned counsel submitted that from the above analysis, it is clear that the petition of letters of administration intestate filed by the Petitioner and the prayers sought therein shall not advance the interest of Justice but shall only cause more harm than good. It was their humble submission that this honourable court should direct that the Objectors be listed as beneficiaries in the estate of the late Kipkoech Kipyego Sagony and share as per the provisions of Section 40 of the Law of Succession Act.



Respondent's written submissions

33. The Respondent, through learned counsel Mr. Tororei, filed written submissions in opposition to the application for revocation of grant.
34. Learned counsel submitted that the Respondent lawfully petitioned for the grant following the demise of the deceased's only biological son, to whom she was married. She has since administered the estate in accordance with the confirmed grant and the provisions of the *Law of Succession Act* (Cap 160). Counsel argued that the Objectors' application seeking to revoke the said grant is without merit, lacks a proper legal foundation, and does not meet the threshold under Section 76 of the Succession Act.
35. Learned counsel identified five key issues for the court's determination enumerated as follows:
 - a. Whether the Grant was obtained fraudulently or by concealment of material facts.
 - b. Whether the objectors are beneficiaries of the estate.
 - c. Whether the objectors have established any grounds under section 76 of the *Law of Succession Act*.
 - d. Whether the title deed issued to the Respondent should be cancelled and the land reverted to the name of the deceased.
 - e. Whether the orders sought by the objectors should be granted.
36. Counsel noted that the application before court seeks to establish whether the objectors fall under the provisions of section 29 of the *Law of Succession Act*.
37. On the first issue concerning allegations of fraud, learned counsel submitted that fraud has been defined in Black's Law Dictionary as consisting of some deceitful practice or wilful device, resorted to with intent to deprive another of his right, or in some manner to cause him an injury. Further that the Black's Law Dictionary 9th Edition at Page 731 also defines fraud as "a knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment.
38. Counsel emphasized that the proof of fraud requires clear and cogent proof. The standard of proof on allegation of fraud was discussed in the case *Urmila W/O Mahendra Sha Vs. Barclays Bank International Ltd & Another* (1979) eKLR, which referenced the Court's predecessor in *Ratilal Gordhanbhai Patel V Lalji Makanji* [1957] EA 314, 317, where it was stated that there is one preliminary observation which must be taken on the learned judge's treatment of evidence: he does not anywhere expressly direct himself on the burden of proof or on the standard of proof required. Allegations of fraud must be strictly proved, although the standard of proof may not be so heavy as to require proof beyond reasonable doubt, something more than a mere balance of probabilities is required. There is no specific indication that the learned judge had this in mind, and there are some indications which suggest he had not.
39. Counsel argued that the Objectors have not specified what made the allocation of grant in this cause to be defective in substance and also failed to prove there were false statements made. In support, counsel cited *In re Estate of Michael Kipkosgei Kurgat (Deceased) 2021* eKLR, where the Court in the case of *Jamleck Maina Njoroge -Vs- Mary Wanjiru Mwangi* (2015) eKLR at paragraph 11 of its ruling in revoking a grant reiterated the grounds upon which a grant can be revoked, stating that the circumstances that can lead to the revocation of grant have been set out in Section 76 *Law of Succession Act*. That for a grant to be revoked either on the Application of an interested party or on the court's own



motion there must be evidence that the proceedings to obtain the grant were defective in substance, or that the grant was obtained fraudulently by making of false statement, or by concealment of something material to the case, or that the grant was obtained by means of untrue allegations of facts essential in point of law.

40. Counsel submitted that the Respondent did not obtain the grant fraudulently as alleged by the Objectors. On the contrary, the Respondent, being the lawful widow of the deceased's only biological son the late Philip, diligently and faithfully followed all the procedural and legal requirements set out under the [Law of Succession Act](#) (Cap 160) and the Probate and Administration Rules. That the petition for letters of administration was supported by all necessary documentation, including the deceased's death certificate, a duly executed Chief's letter, a truthful inventory of the deceased's estate, and a list of known beneficiaries. That at the time of applying for confirmation, the Respondent complied with Rule 40 by filing the schedule of distribution, supported by the requisite consents of all adult beneficiaries under Form 37, as required in law.
41. Counsel further submitted that the Respondent's petition was gazetted in accordance with the law, and no objection was raised during the 30-day statutory period. Consequently, the grant was rightfully issued and subsequently confirmed by the court on 9th June 2009, following full compliance with Section 71 of the Act. Further, the transmission of land parcel Uasin Gishu/Elgeyo Border/206 into the name of the Respondent was done lawfully, pursuant to the confirmed grant. There was no concealment, fraud, or exclusion of any lawful beneficiary at the time.
42. Counsel concluded that the objectors have failed to demonstrate any legal right or standing under Section 29 of the Act, nor have they provided any credible basis under Section 76 to justify revocation of the grant. The allegations before this Honourable Court are not only unfounded but amount to an afterthought intended to unjustly disturb a lawful and concluded succession process. The Respondent lawfully filed the succession cause, attached the death certificate, and obtained all consents required under the Probate and Administration Rules. The grant was confirmed after the statutory notices, and no objection or protest was raised at the time, indicating that due process was followed. Therefore, the Objectors have failed to meet this legal threshold of providing a clear and cogent evidence of their mere allegation of fraud.
43. On the second issue regarding whether the objectors are beneficiaries, counsel submitted that it is not disputed that no evidence was laid before the honourable court to confirm that the deceased and 1st objector was never married to the deceased Kipkoech Kibiego Sagony. That it came out clearly that they only cohabited and were never married and no prayer was made to the court to declare a presumption of marriage between the deceased and the now deceased 1st Objector. It is also not disputed that the 2nd and 3rd objectors were not the biological children of the deceased.
44. Counsel emphasized that it came out during the hearing and was confirmed by the petitioner and her witnesses that the 1st, 2nd and 3rd objectors after the murder of the petitioner's husband (who is the only biological child of the deceased), that they all moved from the deceased Kipkoech Kibiego Sagony from the year 1999 and have never set foot on the said property up to the time of his demise. It therefore follows that all the objectors were not receiving any maintenance from the deceased immediately prior to his death, them having been out of contact for over 8 years.
45. Learned counsel submitted that it was confirmed from the statement of DW2 and DW3 that no marriage ceremony was ever celebrated by the deceased and the 1st objector. It was not disputed that the objectors did not even set foot on the deceased persons property during his funeral and neither was the 1st objector who purports to be the wife of the deceased buried on the deceased person's property. Therefore, it goes without saying that the 2nd and 3rd objectors whose biological father is known moved



back to their biological father's home and are now seeking to unjustly enrich themselves from the estate of Kipkoech Kibiego Sagony.

46. Counsel noted that it was the testimonies of DW2 and DW3 that under the Keiyo customary laws, it is only a biological father that would take their sons through with the circumcision ceremony. There testimonies confirmed that the deceased did not take part in the circumcision rites of the 2nd and 3rd objectors them having being fed and clothed by Kimutai Kibungei, their biological father a fact that stands uncontroverted.
47. On the third issue concerning the legal threshold for revocation, counsel submitted that under Section 76 of the [Law of Succession Act](#), only persons who are beneficiaries or dependants of the deceased have the legal standing to move the court for revocation of a grant. Therefore, the question of who can apply for revocation of a grant is answered in the nomenclature deployed in Section 76 of the [Law of Succession Act](#).
48. Mr. Tororei submitted that the objector's claim is anchored on speculation, hearsay and malice, and is calculated to deprive the lawful widow of her inheritance. He invited this court to find that the application is incompetent, malicious, and based on extraneous personal grievances, not legal entitlement.
49. On the fourth issue regarding whether the title deed should be cancelled, counsel submitted that a title holder enjoys statutory protection by dint of Section 26 (1) (b) of the [Land Registration Act](#) which provides that the certificate of title issued by the Registrar upon registration or to a purchaser of land upon a transfer shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner and that the proprietor shall not be subject to challenge, except on the ground of fraud or misrepresentation to which the person is proved to be a party; or where the certificate of title has been acquired illegally, procedurally or through a corrupt scheme.
50. Counsel emphasized that Section 107 of the [Evidence Act](#) Cap 80 provides that Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist. That upon confirmation of the grant, the Respondent was lawfully entitled to transmission of the estate, including land parcel Uasin Gishu/Elgeyo Border/206. The process was conducted in compliance with the [Land Registration Act](#), and the title was issued lawfully. There are no legal grounds for the cancellation of title as sought by the Objectors.
51. In conclusion, learned counsel submitted that the application is fatally defective and lacking in merit. The Objectors are Strangers to the estate, Lacking in locus standi and have failed established any fraud or concealment, and are merely seeking to unjustly benefit from the estate of a person to whom they had no legal connection or dependency.

Analysis and determination

52. This succession dispute centers on a fundamental question: who has the rightful claim to inherit from Sagony Kibiego Kipkoech, particularly his land parcel Uasin Gishu/Elgeyo Border/206? The answer depends entirely on whose version of family history and facts is well anchored in the law and in evidence.
53. The story begins in Kenya's post-independence era, when families received allocated plots in the Uasin Gishu/Elgeyo Border Scheme. From 1963, Sagony's allocated plot became home to what neighbors understood as his family. There was Sagony himself, a woman named Tapyotin Kipkoech, and children including Francis Kiptoo Koech and Joseph Kiptarus Koech. This arrangement continued



- undisturbed for over thirty years. The community treated them as an ordinary family unit, and no one questioned the relationships.
54. The first crack in this family structure appeared in 1999 when Philip Koech Birir was fatally stabbed at the family homestead. Some knew him as Sagony's son. Philip's death triggered immediate upheaval that would reshape everything that followed. His widow, Esther Jemutai Koech, found herself in bitter conflict with other family members. Houses were demolished, relationships severed, and Tapyotin along with Francis and Joseph left the land permanently. They would not return, not even for Sagony's funeral six years later.
 55. When Sagony died in 2005, Esther stepped forward as the natural person to handle his estate. With no other family members present or objecting, she successfully petitioned the court for letters of administration in 2008. The process appeared straightforward enough. She provided the required documentation, followed proper procedures, and received confirmation of her grant in 2009. She then transferred Sagony's land into her own name, seemingly concluding the succession matter.
 56. This arrangement stood unchallenged for five years. Then, in 2014, Tapyotin Kipkoech lodged summons for revocation that would rewrite the entire narrative. She claims that far from being absent family members, she and her sons were the primary beneficiaries who had been fraudulently excluded from Sagony's estate.
 57. According to Tapyotin's account, she had been Sagony's wife under Keiyo customary law since before independence. Francis and Joseph were their sons together. Philip was also Sagony's son, making Esther merely a daughter-in-law, not a direct heir. In her version of events, Esther had deliberately concealed their existence to steal their inheritance. The marriage had been real, the children were legitimate, and the succession process had been a calculated fraud.
 58. Esther's response painted an entirely different picture. She maintained that Tapyotin had never been legally married to Sagony. They had merely cohabited without any formal ceremony or recognition. More significantly, she claimed that Francis and Joseph were not Sagony's biological children at all. Rather, they were the sons of Tapyotin's previous relationship with a man named Kimutai Kibungei. In her telling, Sagony had never accepted these boys as his sons. After Philip's murder in 1999, she suggested, family suspicions had pointed toward these very individuals as potential culprits.
 59. This court now faces the task of determining which narrative is legally tenable and reflects reality. At stake are fundamental questions about marriage recognition, inheritance rights, and the question dependency as enumerated under section 29 of the [Law of Succession Act](#).

Was the presumption of marriage established?

60. Section 119 of the [Evidence Act](#) provides as follows;

“The court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common cause of natural events human conduct and public and private business, in their relation to the facts of a particular”.
61. In the case of MNK Vs POM Initiative for Strategic Litigation (Amias Curie) (2023) KESC 2 (KLR), the Supreme Court stated: “Presumption of Marriage is a well settled common law principle that long cohabitation with a general reputation as husband and wife, raises a presumption that the parties have contracted a marriage.....” . It added that it is a rebuttable presumption.



62. In the same case, (MNK VS POM- Supra) the court set out the parameters within which a presumption of marriage can be met. The parameters were stated as follows;

- “ a. the parties must have lived together for a long time.
- b. The parties must have the legal right or capacity to marry.
- c. The parties must have intended to marry.
- d. There must be consent by both parties.
- e. The parties must have held themselves out to the outside world as being a married couple.
- f. The onus of proving the presumption was on the party who alleged it.
- g. The evidence to rebut the presumption had to be strong, distinct, satisfactory, and conclusive.
- h. The standard of proof was on a balance of probabilities.”

63. According to Halsbury’s Laws of England, Matrimonial and Civil Partnership Law (Volume 72) 5th Edition 2015:

“Where a man and a woman have cohabited for such a length of time, in such circumstances, as to have acquired the reputation of being man and wife, a lawful marriage between them will be presumed even if there is no prior evidence of any marriage ceremony having taken place, particularly where the relevant facts have occurred outside the jurisdiction and this presumption can be rebutted only by strong and weighty evidence to the contrary.”

64. The doctrine of presumption of marriage was initially introduced in Kenya through the case of Hortensia Wanjiku Yawe v The Public Trustee Nairobi [1976] eKLR. Subsequently, in Mary Njoki v John Kinyanjui Muthuru & 3 others, (Mary Njoki) [1985] eKLR, Kneller JA articulated the principles in the following manner:

- “i. The onus of proving customary law marriage is generally on the party who claims it;
- ii. The standard of proof is the usual one for a civil action, namely, ‘on the balance of probabilities;
- iii. Evidence as to the formalities required for a customary law marriage must be proved to that standard; (Mwagiru v Mumbi, [1967] EA 639, 642)
- iv. Long cohabitation as a man and a wife gives rise to a presumption of marriage in favour of the party asserting it;
- v. Only cogent evidence to the contrary can rebut the presumption (Toplin Watson v Tate [1937] 3 All ER 105
- vi. If specific ceremonies and rituals are not fully accomplished this does not invalidate such a marriage. (Sastry Veliader Aronegary v Sembecutty Vaigalie (1880-1) 6 AC 364; Shepherd George v Thye, [1904] 1 Ch 456)”



65. The judge went on to state:

“Cohabitation and repute do not always constitute a marriage. They can be part of a mode of proving one in that they are substituted for some missing element or elements. One of the earliest put it this way. Cohabitation, with habit and repute, in the absence of countervailing proof to the contrary, establish a marriage on the ground that the cohabitation as husband and wife is proof that the parties have consented to contract that relationship.”

Nyarangi JA in the same judgment delivered himself as follows;

“In my judgment, before a presumption of marriage can arise, a party needs to establish long cohabitation and acts showing general repute. If the woman bears a child or better still children, so that the man could not be heard to say that he is not the father of the children, that would be a factor very much in favour of presumption of marriage. Also, if say, the two acquired valuable property together and consequently had jointly to repay a loan over a long period, that would be just what a husband and wife do and so it would be unreasonable to regard the particular man and woman differently. Performance of some ceremony of marriage would be strong evidence of the general repute that the parties are married. To sum it, there has to be evidence that the long cohabitation is not close friendship between a man and woman, that she is not a concubine but that the cohabitation has crystallized into a marriage and that it is safe to presume that there is marriage. To my mind, these features are all too apparent in the Yawe and in Mbiti (supra). To my mind, presumption of marriage, being an assumption does not require proof, of an attempt to go through a form of marriage known to law.”

66. Our courts have subsequently applied the doctrine of presumption of marriage in several cases. In *Phylis Njoki Karanja & 2 others v Rosemary Mueni Karanja & another* [2009] eKLR the Court of Appeal stated as follows:

“Before presumption of marriage can arise a party needs to establish long cohabitation and acts of general repute; that long cohabitation is not mere friendship or that the woman is not a mere concubine that the long cohabitation has crystallized into a marriage and it is safe to presume the existence of a marriage. We are of the view that since the presumption is in the nature of an assumption it is not imperative that certain customary rites be performed.”

67. Having set out the legal framework governing the presumption of marriage, this court must now apply these principles to the facts before it. The central question is whether Tapyotin Kipkoech has established, on a balance of probabilities, that she was married to the deceased Sagony Kibiego Kipkoech under Keiyo customary law, or alternatively, whether the circumstances give rise to a presumption of marriage.

68. The evidence before this court demonstrates that Tapyotin Kipkoech and the deceased cohabited from approximately 1963 until 1999, a period spanning approximately 36 years. PW1 testified that she got engaged to the deceased one year before independence and lived with him on the suit property from 1963. This testimony was corroborated by PW2, Ambrose Kimaiyo Sang, who confirmed that he found the deceased and Tapyotin living together as husband and wife. Even DW2, Peter Kiplagat Chebiego, a cousin to the deceased, confirmed that the 1st objector was married to the deceased and that they lived together on the suit property.



69. The length of this cohabitation is significant. A period of 36 years is not merely long; it represents the better part of a lifetime. This is not a transient relationship or casual arrangement, but rather a sustained domestic partnership that endured for decades. The law recognizes that such extended cohabitation, particularly when coupled with other factors, creates a strong inference that the parties intended to be married.
70. The evidence establishes that the community perceived and treated Tapyotin and the deceased as husband and wife. PW2 testified that within his knowledge, the late Kipkoech Kibiego Sagony was the husband to Tapyotin. The fact that neighbors and relatives referred to them in these terms, and that this perception persisted over three decades, is compelling evidence of general repute.
71. Furthermore, the fact that Tapyotin and the deceased raised children together on the family land, established a joint homestead, and were integrated into the community as a family unit reinforces this general repute. The community's understanding of their relationship was not that of casual cohabitation or concubinage, but of marriage. As Nyarangi JA observed in *Mary Njoki*, the cohabitation must have "crystallized into a marriage" such that it is safe to presume its existence.
72. PW1 testified that she got married under Keiyo customary law after independence, and that dowry was paid in the form of two cows. She further testified that the engagement ceremony took place at Talget and the Koito ceremony was performed at her father's home. While the respondent's witnesses disputed whether formal marriage ceremonies were conducted, this court notes the principle established in *Mary Njoki* case that if specific ceremonies and rituals are not fully accomplished, this does not necessarily invalidate the marriage.
73. The court in *MNK v POM* (Supra) emphasized that the parties must have intended to marry and must have held themselves out to the outside world as a married couple. The evidence before this court suggests that both elements were present. The deceased and Tapyotin lived as husband and wife for over three decades, raised a family together, and were recognized as such by their community.
74. Tapyotin bore children during her relationship with the deceased, including the 2nd and 3rd objectors. While the respondent disputes their paternity, claiming they are the biological children of Kimutai Kibungei, this allegation requires a careful examination.
75. The evidence reveals that the 2nd and 3rd objectors lived with the deceased on the family land from birth until 1999. PW3 testified that the deceased gave him his name, which he used to acquire his identity card. The fact that the deceased allowed these children to bear his name, live on his land, and be raised as members of his household for decades suggests acceptance, regardless of biological paternity.
76. The onus of establishing the presumption of marriage rests with Tapyotin Kipkoech. The standard of proof is on a balance of probabilities. Having considered all the evidence before this court, I am satisfied that Tapyotin has discharged this burden. The evidence of long cohabitation (36 years), general repute as husband and wife, establishment of a matrimonial home, and the raising of children together creates a strong presumption of marriage.
77. The breakdown of family relationships after Philip's death in 1999 is certainly significant. The evidence shows that Tapyotin and the 2nd and 3rd objectors left the property and did not return, even for the deceased's funeral in 2005. The respondent suggests this demonstrates that they were never truly family members. However, family estrangement, even severe estrangement, does not retrospectively invalidate a marriage that existed for 36 years prior to the breakdown.
78. Based on the totality of the evidence and applying the principles established in *Hortensia Wanjiku Yawe*, *Mary Njoki*, and *MNK v POM*, this court finds that a presumption of marriage arose between



Tapyotin Kipkoech and the deceased Sagony Kibiego Kipkoech. They cohabited for approximately 36 years, held themselves out as husband and wife, were recognized as such by their community, established a matrimonial home, and raised children together. The evidence presented by the respondent, while creating some doubt about certain aspects of the relationship, does not meet the threshold required to rebut this presumption.

79. Accordingly, this court declares that Tapyotin Kipkoech was the wife of the deceased under Keiyo customary law or, at minimum, that the law presumes her to have been his wife by virtue of their long cohabitation and general repute.
80. Having determined that a presumption of marriage existed between Tapyotin Kipkoech and the deceased, this court must now examine whether the objectors have established grounds for revocation of the grant under Section 76 of the *Law of Succession Act*. This provision sets out specific circumstances under which a grant of representation may be revoked or annulled.
81. Section 76 of the *Law of Succession Act* provides as follows:

“76. Revocation or annulment of grant

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.”



82. As observed by Musyoka J in *In the Matter of the Estate of Prisca Ong'ayo Nande (Deceased)* [2020] eKLR, a grant of letters of administration may be revoked on three general grounds: first, where the process of obtaining the grant was attended by problems, whether through procedural defects, fraud, misrepresentation or concealment of material facts; second, where the grant was obtained procedurally but the administrator thereafter encountered problems with the exercise of administration; and third, where the grant has become useless and inoperative following subsequent circumstances.
83. The objectors in this case rely primarily on grounds that the proceedings to obtain the grant were defective in substance and that the grant was obtained fraudulently through concealment of material facts.
84. The objectors contend that the respondent deliberately concealed from the court the existence of Tapyotin Kipkoech as the deceased's wife and Francis Kiptoo Koech and Joseph Kiptarus Koech as his sons. They argue that had these material facts been disclosed, the court would not have issued the grant to the respondent alone without the participation of the other beneficiaries.
85. The evidence establishes that when the respondent filed her petition for letters of administration intestate in 2008, she did not disclose the existence of Tapyotin or the 2nd and 3rd objectors as potential beneficiaries. The petition presented to the court suggested that the deceased's only heir was Philip Koech Birir, the respondent's late husband, and by extension, his widow and children.
86. Section 29 of the *Law of Succession Act* defines dependants entitled to benefit from an intestate estate as including the wife or wives, children, and certain other relatives of the deceased. Given this court's finding that Tapyotin was the wife of the deceased or at minimum, is presumed to have been his wife, her omission from the petition was a material concealment.
87. In succession matters, applicants for grants of representation have a duty to make full and frank disclosure of all persons who may have an interest in the estate. This duty exists regardless of whether the applicant personally believes those persons have valid claims. The determination of who qualifies as a beneficiary or dependant is a matter for the court to decide based on proper evidence, not for the applicant to determine unilaterally.
88. The concealment in this case was material because it deprived potential beneficiaries of the opportunity to participate in the succession proceedings. Had Tapyotin and the 2nd and 3rd objectors been notified, they could have presented evidence of their relationships with the deceased, consented to or objected to the proposed administrator, and ensured their interests were protected in the distribution of the estate.
89. The objectors also argue that the proceedings to obtain the grant were defective in substance. They point to the letter from the Assistant Chief which allegedly contained false information regarding the beneficiaries and improperly purported to give consent on behalf of the family.
90. The respondent on the other hand argues that she acted in good faith based on her understanding of the family relationships and that the objectors have only themselves to blame for their exclusion, having abandoned the family after Philip's death in 1999 and failing to attend the deceased's funeral in 2005.
91. Based on the foregoing analysis, this court finds that the objectors have established grounds for revocation under Section 76(b) and (c) of the *Law of Succession Act*. The grant was obtained through concealment of material facts, specifically the existence of the deceased's wife (or presumed wife) and the persons who had been raised as his children. These omissions were material to the case and resulted in proceedings that were defective in substance.



92. The appropriate remedy is revocation of the grant of letters of administration intestate issued to Esther Jemutai Koech on 1st August 2008 and confirmed on 9th June 2009.
93. The final question to be determined is whether the 2nd and 3rd objectors, Francis Kiptoo Koech and Joseph Kiptarus Koech, are entitled to benefit from the estate as children or dependants of the deceased.
94. The evidence establishes that the 2nd and 3rd objectors lived with the deceased from birth until 1999, a period of several decades. They were raised in his household, on his land, and bore his name. PW3 testified that the deceased gave him his name, which he used to acquire his identity card. These acts suggest some bit of acknowledgment and acceptance as members of the family.
95. Even if the court were to accept the respondent's evidence that the 2nd and 3rd objectors are not biological children of the deceased, they may nonetheless qualify as dependants under Section 29 of the *Law of Succession Act* if they were receiving maintenance from the deceased immediately prior to his death or were otherwise dependent on him.
96. However, the evidence shows that the 2nd and 3rd objectors left the deceased's homestead in 1999, following the death of Philip Koech Birir, and had no further contact with the deceased until his death in 2005. The respondent's witnesses testified that the objectors did not attend the deceased's funeral.
97. Section 29 of the *Law of Succession Act* provides as follows:
- “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. (c)where the deceased was a woman, her husband if he was being maintained by her immediately prior to the date of her death.”
98. Nevertheless, this court must consider the significant period during which the 2nd and 3rd objectors lived with the deceased before their departure in 1999. The evidence establishes that they resided with him from birth until 1999, a period spanning several decades. Francis Kiptoo Koech and Joseph Kiptarus Koech lived on the deceased's land, were raised in his household, and were treated as members of his family for the better part of their lives.
99. The evidence shows that for decades, the deceased provided the 2nd and 3rd objectors with shelter, sustenance, and a family environment. He allowed them to bear his name, live on his land, and be raised as his children. PW3's testimony that the deceased gave him his name, which he used to obtain his identity card, is particularly significant as it demonstrates formal recognition of the relationship.
100. The fact that the 2nd and 3rd objectors were compelled to leave the homestead following family disputes after Philip's death in 1999 does not erase the decades of dependency that preceded this breakdown. Their departure was not voluntary abandonment but rather occurred in circumstances of family conflict and grief following a traumatic event.
101. The respondent's argument that the 2nd and 3rd objectors forfeited any claim by leaving in 1999 and not attending the deceased's funeral fails to consider the circumstances of their departure. They left



following a traumatic family breakdown after Philip's murder, and their absence from the funeral may reflect the depth of the family rift rather than a rejection of their relationship with the deceased.

102. This court finds that the 2nd and 3rd objectors have established their status as dependants of the deceased based on the prolonged period of maintenance and care they received from him. The significant length of time they lived as members of his household from birth until 1999 created a dependency relationship that gives rise to inheritance rights.

103. In light of the foregoing findings, this court makes the following orders:

- a. The grant of letters of administration intestate in the estate of the late Sagony Kibiego Kipkoech issued to Esther Jemutai Koech on 1st August 2008 and confirmed on 9th June 2009 is hereby revoked.
- b. It is declared that Tapyotin Kipkoech was the wife of the deceased Sagony Kibiego Kipkoech given that the law presumes her to have been his wife.
- c. It is declared that Francis Kiptoo Koech (2nd objector) and Joseph Kiptarus Koech (3rd objector) are dependants of the deceased entitled to benefit from his estate under Section 29 of the Law of Succession Act.
- d. The title deed issued to the respondent for land parcel number Uasin Gishu/Elgeyo Border/206 pursuant to the revoked grant is hereby cancelled, and the title shall revert to the name of the deceased pending fresh administration of the estate.
- e. The restriction placed over land parcel number Uasin Gishu/Elgeyo Border/206 shall remain in place pending the hearing and determination of fresh succession proceedings.
- f. The costs of this application shall be borne by the estate.

104. Orders accordingly.

DELIVERED VIA CTS DATED AND SIGNED AT ELDORET ON THIS 25TH DAY OF SEPTEMBER, 2025

.....

R. NYAKUNDI

JUDGE

