In re Estate of Peter Mburu Echaria (Deceased) (Succession Cause 2634 of 2014)
[2025] KEHC 14257 (KLR) (Family) (9 October 2025) (Judgment)

Neutral citation: [2025] KEHC 14257 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

FAMILY

SUCCESSION CAUSE 2634 OF 2014

HK CHEMITEI, J

OCTOBER 9, 2025

BETWEEN

LISH KIBUI ECHARIA .... 1ST APPLICANT

STEPHEN NGINGI ECHARIA .... 2ND APPLICANT

CATHERINE WANJIKU ECHARIA .... 3RD APPLICANT

AND

DOROTHY KANYIVA ECHARIA .... RESPONDENT

JUDGMENT

1. The deceased herein died on 21st July 2014 at Nairobi hospital. He died testate.
2. In his Will dated 27th April 2010 he nominated the Respondent as his executrix who thereafter filed for grant which was issued on 27th April 2015. She subsequently sought to have the grant confirmed vide an application dated 29th October 2015.
3. The Objectors filed an application seeking to revoke the grant dated 6th September 2017 arguing that the alleged Will was improper as the deceased was not in his right state of mind at the time, he made it.
4. The matter after a long and protracted period of several applications was finally heard by several judges by way of oral evidence. Each sides testified and called witnesses.
5. After the closure of their cases the court directed them to file written submissions which they complied.

Respondent's case

6. Dorothy Kavinya Echaria testified that she first met the deceased in April 1987, and after a while they formally married at the Attorney General's chambers.

7. She went on to state that the deceased had mentioned to her that he had prepared a Will which she only discovered after he had passed on through Dr. Kuria Advocate who summoned her after his death

8. She stated that she did not know under what circumstances the Will was made by the deceased.

9. She said that the deceased had a strained relationship with his brother John Kamau Echaria. He however was in a good relationship with his other brother Christopher.

10. She testified that she began living with the deceased from late 1987 and that she knew his other children.

11. As regards his divorce with his first wife, she said that she encouraged him to reconcile with his other family members.

12. That later the house in which the deceased lived with his workers was invaded on 3rd May 1997 and they left for good.

13. She also said that she was aware of the Court of Appeal decision which apportioned the parcel of land namely Tigoni LR 6893 between the deceased (3/4) and his former wife (1/4).

14. When cross examined, she said that the deceased was not living with his children by the time she married him.

15. She further said that the Will was made after the divorce judgement had been delivered.

16. She denied that she influenced the deceased into making the Will.

17. She stated that the medical report from AIC Kijabe Hospital confirmed that between 2009 and 2011, the deceased was being treated for prostate cancer. The Will was executed on 27th April, 2010. The report also confirms he was mentally competent until his last day of life.

18. She said that the deceased excluded her children because he had a strained relationship with them.

19. PW2 Dr. Ramesh Chandra Patel, a medical doctor testified on behalf of the Respondent. He said that he knew the deceased who had been his patient from 1989.

20. He went ahead and produced a medical report detailing his health condition.

21. On Cross-Examination he said that at the time he met the deceased in 1989 he was suffering from high blood pressure, a skin condition, diabetes and gout. He was later diagnosed with prostate cancer, though the diagnosis was made in Nairobi Hospital and not by him.

22. He went on to state that the last time he saw the deceased was on 20th June, 2014 at his home in Tigoni, after he was informed that he was unwell. He found him, he said in severe pain in his left shoulder, which he managed by administering analgesics.

23. At the time he visited him at home the Respondent was also present and she mentioned that the disease had affected their marital relationship.

24. When re-examined he said that as per his report, despite the chronic illness his mental capacity was alert until his death.

25. PW3 Gladys Wangia Mwangi, an Advocate, testified that she witnessed the signing of the Will dated 27th April 2010 by the deceased. She said that by then she was an employee of Kamau Kuria & Kariuki Advocates.

26. She further stated that the second attesting witness, Wamucii Nyota, was also an advocate in the same firm and that she was acquainted to the deceased having been a client of Dr Kuria whom she had worked with.

27. She said further that at the time of making the Will he was in good physical as well as mental conditions. She also witnessed the other witness signing or executing the Will.

28. Upon being cross-examined she said that she did not draft the Will but she only saw the deceased signing the same.

Objectors /Applicants case

29. DW1 John Kamau Echaria testified that the deceased was his younger brother.

30. He stated that he was surprised that he excluded his family or his children from his Will despite loving then deeply.

31. He went on to state that his behaviour changed after he married the Respondent and after separating with his wife and his efforts to intervene were fruitless.

32. On cross-examination he said that he was not aware of his liabilities and that he run his affairs independently. That neither him nor his wives called him to resolve his marital affairs.

33. He denied knowing any fight between the deceased and Stephen his son.

34. He denied any knowledge of the Will as he never discussed with him.

35. DW2 Stephen Ngige Echaria the deceased's son and who lives in the United States of America testified that he shared a good and a cordial relationship with the deceased.

36. He said that he left home due to disagreements between his parents. That the deceased locked the homestead and left instructions that none of his children should return or gain access to it.

37. He testified of an altercation between him and the Respondent which led to the deceased pointing a gun at him. He reported the matter at the police station who thereafter carried out investigations.

38. About the Will he said that he had serious reservations about it and he suspected the Respondent exerted some influence upon the deceased.

39. On cross-examination he denied ever assaulting the deceased.

Submissions

40. Dorothy Kanyiva Echaria has filed written submissions dated 14th May, 2025. The gravamen of the submissions is that the deceased had the testamentary freedom to make his Will and that fact has not been challenged.

41. She placed reliance among others on the following:

    a. Dr. Sunny Samuel vs Simon M. Mbwika and Another [1998] eKLR where the court of appeal stated as follows: "In not too similar circumstances, Mustafa J. A. (as he then was) delivering the first judgment of the Court of Appeal for East Africa in the case of Industrial and Commercial Development Corporation vs Kariuki Gatheca [1977] KLR 52 was inclined to the view that the applicant had in effect affirmed and approbated the judgment, and had enjoyed and continued to enjoy the full benefit of it and would be precluded from attacking

it. Law V – P, agreed in every respect with the judgment prepared by Mustafa, J. A. and so did Musoke J. A."

b. Nairobi Court of Appeal, Civil Appeal No. 213 of 1997: John Gitata Mwangi & 3 others v Jonathan Njuguna Mwangi & 4 others where the court of appeal stated as follows: "The circumstances under which a court can interfere with the freedom of testamentary capacity are well set out in thee case of Re Inns, Inns v Wallace and Others (1947) 2 ALL ER 656. In the case, the Chancery Division Court in England was considering the widow's pleas that the provision made for her by the will was not reasonable because it was insufficient to enable her to live in the matrimonial home as the testator had intended her to do. Wynn – Parry J, (as the then was) said at page 311: - Th Act is not designed to bring about any such compulsion. It proceeds on the postulate that a testator should continue to have freedom of testamentary disposition, provided that his disposition as regards dependants should be capable, having regard to all the circumstances, of being regarded by the court as reasonable. From this it follows that the jurisdiction is essentially a limited jurisdiction… The previous decisions clearly establish that the jurisdiction is one which should be cautiously if not sparingly used. The main difference between this and earlier cases is that this, so far as the reported cases are concerned, is the first one in which an estate of this magnitude has had to be considered. Notwithstanding the size of the estate, however, the same principles must be applied and applying those principles, it appears to me impossible to sat that the provision which the testator has made for his widow is unreasonable, merely because there appears from the evidence and on the face of the will to be an anticipation by him – or even an intention on his part – that his widow should contribute to live in marital home, in which, for the purpose, he gives a life interest followed by a gift income, which in any event, proves insufficient to enable her do so… The question simply is whether the will or the disposition has made reasonable provision and not whether it was unreasonable on the part of the deceased to have made no larger provision for Jonathan. The deceased was fully aware of Jonathan's contribution to the fortunes of this estate."

Applicants/Objectors submissions

42. Lish Kibui Echaria, Stephen Ngige Echaria and Catherine Wanjiru Echaria have filed written submissions dated 14th June, 2025.

43. As expected, they have submitted that the said Will was void for the reason that the deceased did not have capacity to prepare one because he was not of sound mind. They placed reliance among others on the following:

a. In Re Estate of Julius Mimamo (Deceased) [2019] KEHC where the court held as follows: "Coercion would refer to circumstances where a person is literally forced to make a Will in a certain way, either under duress or threats to life or limb. The Will, though made by the deceased himself, in terms of the same being executed by him, would not reflect his Will or wishes or intentions in the circumstances, but those of the person driving him to make it in that particular way. Importunity refers to what is often described as undue influence. In such cases, there would be no coercion or force or duress as such, but pressure would be brought on the testator of such nature that he cannot resist. He would bend to the pressure, not so much because he is persuaded or convinced that he should make his Will in such manner, but because he would be tempted to rid himself of the pressure by capitulating to it… It also bespeaks undue influence. For a person raising the issue to succeed, it must be established that the testator was in a weaken position on account of old age or disease or intoxication, he made a Will while in that condition, and the propounder of the will played the central role in the

process of the execution of the will. That role would include being the person in general control of the testator, being the one who took him around, being the person who prepared the will or procured his own advocate to do it, or the person who took him to an advocate of his own choice for that purpose."

b. In Re Estate of Kimetto Arap Kili (Deceased) [2023] KEHC 636 (KLR) where the court held as follows: "Where a person who plays the central role in the making of the Will, that is other than the testator himself/herself, takes a substantial benefit under the will; the role of the court is to scrutinize the evidence carefully so as to be satisfied that the maker of the Will did indeed know and approve the contents of the documents before he/ she signed it. Suspicion would arise for instance in cases where the principal beneficiary under the Will is the person who suggested the terms of the Will is the person who suggested the terms of the Will to the maker, or wrote the document himself, or took the testator to an advocate of his own choice, among others..."

Analysis And Determination

44. Having gone through the applications before this court, the responses and the rival submissions; I find that the substantive issue for determination is whether the Will for all intents and purposes was valid and met the threshold provided under the Act.

45. My understating of the Objectors' claim is that the deceased was not in a position to make the Will because he was not of good mental status. I have perused the evidence of Dr Patel, the only medical witness called by the Respondent. Apparently, the Applicants did not call any to support their allegations.

46. The said doctor who had treated the deceased for many years told the court that despite having prostrate cancer the deceased was still in a good state of mind.

47. There is no evidence from Nairobi hospital where the deceased was first diagnosed and where he unfortunately passed on to support any allegations that he was not of sound mind. It is also noted that the cancer disease came much later, almost four years after he had made his Will.

48. In my view therefore, it was incumbent upon the Objectors to lay evidence whether medical or otherwise to buttress the assertion. Section 5 of the Act states as follows concerning this line of argument,

" Persons capable of making wills and freedom of testation

(1) Subject to the provisions of this Part and Part III, every person who is of sound mind and not a minor may dispose of all or any of his free property by Will, and may thereby make any disposition by reference to any secular or religious law that he chooses.

(2) A female person, whether married or unmarried, has the same capacity to make a Will as does a male person.

(3) Any person making or purporting to make a Will shall be deemed to be of sound mind for the purpose of this section unless he is, at the time of executing the Will, in such a state of mind, whether arising from mental or physical illness, drunkenness, or from any other cause, as not to know what he is doing.

(4) The burden of proof that a testator was, at the time he made any Will, not of sound mind, shall be upon the person who so alleges.” (Underlining mine)

49. At the same time there was no evidence that the Will was improper and contrary to Section 11 of LSA. There was no fraud proved by the Applicants. The counsels who prepared the same did so professionally and Advocates Mwangi’s evidence was not shaken.

50. Section 11 of the act states as follows:

“ No written Will shall be valid unless—

(a) the testator has signed or affixed his mark to the Will, or it has been signed by some other person in the presence and by the direction of the testator;

(b) the signature or mark of the testator, or the signature of the person signing for him, is so placed that it shall appear that it was intended thereby to give effect to the writing as a Will;

(c) the Will is attested by two or more competent witnesses, each of whom must have seen the testator sign or affix his mark to the Will, or have seen some other person sign the Will, in the presence and by the direction of the testator, or have received from the testator a personal acknowledgement of his signature or mark, or of the signature of that other person; and each of the witnesses must sign the Will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary.”

51. In Elizabeth Kamene Ndolo v George Matata Ndolo [1996] KECA 209 (KLR) where the court stated as follows: “We start by saying that it was the Respondent who was alleging that the Will was a forgery and the burden to prove that allegation lay squarely on him. Since the Respondent was making a serious charge of forgery or fraud, the standard of proof required of him was obviously higher than that required in the ordinary civil cases, namely proof upon a balance of probabilities; but the burden of proof on the Respondent was certainly not one beyond a reasonable doubt as in criminal cases.”

52. Again, in re Estate of Kimani Kahehu (Deceased) [2018] KEHC 7310 (KLR) where the court held as follows: “10. It is the applicant who alleges that the Will was a forgery. The burden is on him to establish that fact to the required standard. Forgery is a criminal act, and facts to establish it must make out a case beyond balance of probability and towards proof beyond reasonable doubt. See the decision of the Court of Appeal in Elizabeth Kamene Ndolo vs George Matata Ndolo Nairobi Court of Appeal Civil Appeal No. 128 of 1995. A charge of forgery would be that the signature on the document was not that of the deceased. To establish forgery, it is usually necessary to subject the impugned document to testing of the impugned signature or signatures by a document or handwriting expert.”

53. In re Estate of M K (Deceased) [2018] eKLR the court held that: “A person, who seeks to rely on unsoundness of mind as a basis for nullification of a will, must adduce evidence tending to prove that the testator had an illness that had affected his mental capacity at the time, or was drunk or drugged. This calls for testimony as to his state of mind at the material time, and, where possible medical evidence that could point towards such a condition. It should be mentioned that the burden of establishing that the maker of the Will lacked the requisite mental capacity lies with the person making the assertion, in this case that would be the applicant.”

54. In light of the foregoing, I find that the Objectors were unable to establish their claim against the Will and therefore against the deceased's estate.

55. It is evident that there was animosity between the deceased and the objectors courtesy perhaps of his sore relationship with their mother but that did not take away his testamentary capacity and freedom.

56. I therefore hold that the Will dated 27th April 2014 is valid for all intents and purposes.

57. In the premises I find that:-

    (a) The objection proceedings are hereby dismissed with no order as to costs.

    (b) The application for confirmation of grant dated 29th October 2015 is hereby allowed as prayed.

DATED SIGNED AND DELIVERED VIA VIDEO LINK THIS 9TH DAY OF OCTOBER 2025.

H K CHEMITEI

JUDGE