Ngechu v Mwangi & another (Civil Appeal E043 of 2024)
[2025] KEHC 14162 (KLR) (7 October 2025) (Judgment)

Neutral citation: [2025] KEHC 14162 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT KERUGOYA

CIVIL APPEAL E043 OF 2024

EM MURIITHI, J

OCTOBER 7, 2025

BETWEEN

MARGARET NDUTA NGECHU ..... APPELLANT

AND

KENNETH MWANGI ..... 1ST RESPONDENT

PURITY WANDIA KAMURI ..... 2ND RESPONDENT

(An appeal from the Ruling of Hon. E.O Wambo (P.M) in Kerugoya Succession Cause No. E048 of 2021 delivered on 26/5/2023)

JUDGMENT

1. By summons dated 8/12/2021, the Respondent sought inter alia the revocation of the grant issued on 29/3/2021 and confirmed on 21/9/2021, on the grounds that they were a son and a wife of the deceased respectively.
2. The 2nd Respondent swore a supplementary affidavit on 26/2/2022 in support of the application.
3. Eliud Gichoya Kamwaro swore an affidavit on 26/2/2022 in support of the application.
4. The Appellant swore a replying affidavit on 26/1/2022 refuting the contention that the Respondents were in any way related to the deceased.
5. In its impugned Ruling, the trial court rendered thus;

> "It is very clear that the Petitioner Administrator was aware of the claim by the 1st and 2nd applicant, once claiming to be a wife and the other a son. She ought to have indicated that the Chief and to this court. She ought to have citated them or disclosed so that the court could have summoned them. There is no way the 1st applicant could have been included in the eulogy or obituary without the Petitioner/Administrator knowledge...The court cannot

overlook the photographs as they were taken when the deceased was alive hence he could not fake them. If he did not recognize the applicants or did not know them there is no evidence that the photos were to taken in a gathering where many people were in attendance and pictures can be taken as a coincidence by the person who were present. Infact it is not in dispute that the deceased and 2nd applicant were working in the same Government entity thought it is unethical for them to be intimately involved. It is not unheard of. There is also evidence that the 1st applicant was born in 1992, that evidence placed against the testimony of PW3 Eliud Gachoya Kamwaro that he used to visit in the 1990, corroborate...To this court these were issues which if the applicant were aware, of the proceeding could have canvassed and the court would have made a determination. In the premises, I find that the Summons for revocation and/or annulment dated 8th December, 2021 has merit and I allow it as prayed."

The Appeal

6. On appeal, the Appellant filed her memorandum of appeal dated 30/4/2024 raising 7 grounds as follows:

    1. The Learned Trial Magistrate erred in law and fact in the manner that he analysed the evidence that was led and in failing to make a finding that the Appellant had not concealed any material fact from the Court.

    2. The learned trial magistrate erred in law and fact in the manner that he made a finding the deceased had acquired parental responsibility over the 1st Respondent which was not an issue before the trial Court.

    3. The learned trial Magistrate erred in law and fact in implying that the 1st Respondent was a son of the deceased on the ground that the name of the 1st Respondent was in the obituary.

    4. The learned trial magistrate erred in law and fact in disregarding the forged birth certificate filed by the 1st Respondent.

    5. The learned magistrate erred in law and in fact in implying that the 2nd Respondent was the wife of the deceased without making a finding of which form of marriage.

    6. The learned trial magistrate erred in law and fact in implying that the deceased as wife of the deceased in relying on photographs.

    7. The Learned Trial Magistrate failed to critically analyse the case, applicable law and the Appellant's submissions.

Duty of the court

7. This being a first appeal, this court is duty bound to delve at some length into factual details and revisit the facts as presented in the trial court, analyse the same and arrive at its own independent conclusions, but always remembering that, the trial court had the advantage of seeing the witnesses testify. (See Selle v Associated Motor Boat Co. & others [1968] E.A. 123)

Oral Evidence

8. PW1 Kenneth Mwangi adopted his supporting affidavit dated 8th December, 2021 as his evidence in chief and produced annextures 2-8 as exhibits. He testified that, "P. exhibit annexture 4 is my dad and mum. He is deceased. The lady is the 2nd applicant. The deceased was my dad. The 2nd photo is Purity

Wandia. My father deceased. The 3rd is my wife Carolyne. The child is Michael Jilian Kibiru my son. The last one is myself. The photo was taken at Bantu lodge."

9. On cross examination, he stated that, "I have my identity card. It reads Kennedy Mwangi. Wandia is my mother. Margaret Nduta was a wife to the deceased. Joseph Kamwaro Kibiru is son. Daniel Ngechu Kibiru is a son to the deceased. I obtained a birth certificate. I don't know when I obtained the 1st. The 2nd I took in 2021. The 1st birth certificate did not have the name of a father. The 2nd birth certificate I did the application. I took it after filing the application. I didn't pick the birth certificate. I cannot confirm that. I have no idea who inserted. I was born at Tumutumu hospital. The section of name of father is blank. The letter paragraph 3 reads. I cannot confirm he details. I cannot tell you where it comes from. I went to Endarasha boys. I took photographs with my father. We took one at our grandfather's funeral. There are many photos. The photographs were taken in 2018. The 2nd photo I cannot say for certain when it was taken. School fees were paid by mother and dad. He used to give me cash. There is land. The green card entry 3. There is no gift. 2nd green card they don't show there was a gift. I don't have the birth certificate. I did the affidavit. I saw him when I was 3 years. I was staying in Baricho. He was not full time he has worked in several places. The eulogy was prepared by family members and elders. The eulogy we had a seat down. Margaret agreed am a son of the deceased. The agreement was that my mother not be included. There was a meeting. I didn't check the Kenya Gazette but did not see. I checked last year September and October 2021. I did see it. I did not take any steps. The original birth certificate and not have father's name. The identity card I picked my mother's name. My dad was there."

10. In re-examination, he stated that, "I did not initiate because the agreement was that we will have a sit down to commence the process. The wives initiated the eulogy. I was indicated as a son of the deceased when I realized some documents were missing. I applied for another. I could not trace the old one. I did not get involved in the transfer but I was farming on 3 pieces of land i.e. 1. Kiine/Gachoro/2847 2. Kiine/Gacharo/2846 3. Kiine/Gacharo/2897."

11. PW2 Purity Wandia Kamuri adopted the joint affidavit dated 8/12/2021 as her evidence in chief. She testified that, "The 1st applicant is my son. The deceased was my husband. Margaret Nduta is my co-wife. I associate myself on the exhibit. I swore a supplementary affidavit filed 28th December, 2022."

12. On cross examination, she stated that, "I confirm Margaret is a co-wife. Geoffrey is son Daniel Ngichu is a son of the deceased. I met Bernard in 1988. I was working in Baricho. He was married to Margaret Nduta. He used to stay in Kerugoya sometimes. He did contract a customary marriage. My annexture 1 Kenneth was born in 1992 at Tumutumu. The name of the father was blank. I cannot recall. I have picked my son birth certificate. I know the name of the father was not there. I sent an agent. I had sent Mercy Njoroge. I looked at the birth certificate. The name of the father had been inserted. It was a loss of title. I filed the application. I joined the Ministry of land in 2019. P.K. 7 for 2846 entry 2 is Purity Wandia Kamuri. Entry 3 Bernard Kabiru Kamwaro. The entry is made from transfer of land. The value of the gift is included. Transfer is primary document registered. Gift money changes hand. I bought the land from Patrick nothing written. Entry 3 has 150,000/=. In relation 2846 I bought the land in the green card no gift are written. I did not sell the land. He married him 1989. There are many photographs. It was taken in Mombasa in 2017. The other was taken 2018. I selected a few. He used to stay with us both. Under Kikuyu customary laws it is not necessary to name him the name of the grandfathers name. My son took his ID under my name. The deceased was far. He used to come several times. He picked his identity card when he was in secondary school. The father was far. I attended the funeral. No photographs were taken. The chief wrote to the County commissioner. The chief was not aware. My name was not in the eulogy. I used to check the Kenya Gazette. I did see the gazettement. I

was waiting for them to file. We move together. She excluded us yet we were part of the family. This right birth certificate. I have not produced as I did see it necessary to produce. I have not seen the necessity."

13. In re-examination, she stated that, "The amount in the green card is consideration. The District location indicates for the purposes of stamp duty. Stamp duty is paid for a gift. I did not sell the parcels. I gave him as gift. He wanted to do something. The chief's letter is addressed to County Commissioner. He had written me and my son. The chief Kerugoya location. The deceased was staying in both Kerugoya and Kiangwachi."

14. PW3 Eliud Gichoya Kamwaro adopted his affidavit dated 26/2/2022 as his evidence in chief. He testified that, "The deceased was immediate of elder brother. Margaret Nduta was also a wife of the deceased. I know Kenneth Mwangi is a child of the 2nd family of the deceased. Purity Wandia is the 2nd wife of the deceased."

15. On cross examination, he stated that, "Margaret is a wife. I don't know the year they started to live together. I used to visit them when I was in school. In late 1990 I moved to Nairobi. Margaret was residing with Bernard. Paragraph 3 of my affidavit. Kenneth is a son of the deceased. I cannot tell if I was using a birth certificate. I did not go into details of birth certificate. I am not aware of the letter from Registrar of persons. I have spoken with Margaret after the death of my brother. I have spoken with her 3 to four times. We don't have bad blood. I did the eulogy. We have interacted with my brother a lot. I was the immediate follower. We were close in most occasion we used to share information. The eulogy Purity Wandia was omitted by reasons. In the eulogy family section Kenneth Mwangi. There were reasons for omission. I cannot tell the years of cohabitation. Paragraph 5 of my affidavit no gifts from the green card was indicated. The first son under Kikuyu customs is named after the father."

16. In re-examination, he stated that, "At the time of birth my brother had not formally declared his marriage. I did go the eulogy. We shared a lot of meetings because of the 2 families. The elderly insisted that the 1st wife is the only one to be included. I don't have grudges or dispute with Margaret. There was miscommunication on some monies that did not go well after the funeral. We had a family gathering in the presence of my sisters and brother. He disclosed that Kenneth was his son and Purity wife."

17. RW1 Margaret Nduta Ngechu adopted her replying affidavit dated 26/1/2022 as her evidence in chief. She testified that, "I have heard Kenneth Mwangi and Purity Wandia. They were not wife and children of the deceased. I did not concede."

18. On cross examination, she stated that, "My husband had brother's. They were of Unjiru clan. They are staying in separate places. Eliud was staying in Kiangwachi. Eliud is my husband's brother. He said Purity was a wife of my husband. I have no witness who can say Purity is not a wife. Purity says Kenneth is my husband's son. My husband never said he had children outside. I was not involved in the funeral programme. There are photos even mine. They are old photos. I gave them photos. I sent them by whatsapp. The obituary has a photo of Kevin with his wife and children. The family are mentioned in the obituary. I saw it later. The only thing wrong in the obituary is the fact that Kevin is the son. I don't know the photo of Kenneth. The introduction letter dated 11th January, 2021 is not addressed to Deputy County Commissioner. I was to access some money in the accounts. The chief wrote that letter for succession. I was told to bring it. I was told at the registry. I did not sneak it. I applied to confirm before lapse of six months. The summons is dated 19th March 2021. I filed it. I have no reason not to wait for 6 months. I did not want it to delay. I don't know whether Purity transferred land to my husband. She may have been sold to. There is money on the green card. There is no sale on the green card. I have not bought any land. My husband had many lands. I have sold 2 parcels. I did not see any land in Purity's name. Kiine/Gacharo/2846 and KIINI/Gacharo/2847. I sold them for Kshs. 400,000/= each for an 1/8."

19. In re-examination, she stated that, "The obituary was done Eliud Gichoya. He asked for the photos. PWK 2nd photo. They are not similar photos. Purity is not in the photos. Eulogy family section, Kenneth Mwangi is not my child. The green card PWK 7, green card it written 100,000.00 consideration and...The other was 150,000.00. The issue of gift is not mentioned. I don't know the format which the chief's use. My husband did not mention another wife. Eliud lied to court. I have not lied."

Submissions

20. The Appellant cites Selle & Another v Associated Motor Boat Co. Ltd & Others (1968) EA 123, on the duty of the first appellate court. She urges that the Respondents' evidence was inconsistent, contradictory and implausible, and cites Hellen Cherono Kimurgor v Esther Jelagat Kosgei (2008) eKLR, Re Estate of James Meme Anampiu (Deceased) [2018] eKLR, Re Estate of Karia Getao Gicheru (Deceased) [2021] eKLR and Re Estate of Jackson Nicholas Kyengo Mulwa (Deceased) [2021] eKLR.

21. The Respondents fault the Appellant for concealing their existence, necessitating the revocation of the grant, and cite Re Estate of G.K.K (Deceased) [2017] eKLR, Estate of Katana Vuko Wale v Hamisi Katana Vuko [2021] eKLR and Margaret Wagathairu Gichanga v Jimma Mwangi Gichanga [2015] eKLR.

Analysis and Determination

22. From the grounds of appeal, the singular issue for determination is whether the threshold for the revocation of the grant was met.

23. Whereas the Appellant vehemently refuted the contention that the Respondents were a son and a wife to the deceased, respectively, she acknowledged that PW3 was a brother to the deceased, as follows, "Eliud is my husband's brother. He said Purity was a wife of my husband. I have no witness who can say Purity is not a wife. Purity says Kenneth is my husband's son. The obituary has a photo of Kevin with his wife and children. The family are mentioned in the obituary."

24. PW3, the brother of the deceased testified that, "Margaret Nduta was also a wife of the deceased. I know Kenneth Mwangi is a child of the 2nd family of the deceased. Purity Wandia is the 2nd wife of the deceased."

25. The 1st Respondent produced photographs depicting him in the company of his parents, the deceased herein and the 2nd Respondent. Even on thorough cross examination, he reiterated that, "I took photographs with my father. We took one at our grandfather's funeral. There are many photos. The photographs were taken in 2018. School fees were paid by mother and dad. He used to give me cash. The eulogy was prepared by family members and elders. The eulogy we had a seat down. Margaret agreed am a son of the deceased."

26. The 2nd Respondent's corroborative testimony was to the effect that, "The 1st applicant is my son. The deceased was my husband. Margaret Nduta is my co-wife. I associate myself on the exhibit. I swore a supplementary affidavit filed 28th December, 2022." On cross examination, she stated that, "I looked at the birth certificate. The name of the father had been inserted. There are many photographs. It was taken in Mombasa in 2017. The other was taken 2018. She excluded us yet we were part of the family. This right birth certificate."

27. The 1st Respondent is acknowledged as a son of the deceased in the eulogy. While the Eulogy is not a certificate that a person is wife to or child of a deceased person, it is a piece of evidence which taken

together with other evidence may support a finding, on a balance of probabilities, that the person was accepted as a wife of the deceased by his community and the child, at the very least having been accepted by the deceased as a child of his own or as a dependant in terms of the *Law of Succession Act*.

28. The scope of the definition of a child under section 3 (2) of the *Law of Succession Act* clearly transcends mere biological ties, as follows:

> "(2) References in this Act to "child" or "children" shall include a child conceived but not yet born (as long as that child is subsequently born alive) and, in relation to a female person, any child born to her out of wedlock, and, in relation to a male person, any child whom he has expressly recognized or in fact accepted as a child of his own or for whom he has voluntarily assumed permanent responsibility."
>
> A child born out of wedlock, an adopted child, or those otherwise recognized and children whom the deceased had taken into his family as his own, as dependants under the law (see section 29 (b) of the *Law of Succession Act*) are included.

29. The uncontroverted evidence on record coupled with the recognition of the 1st Respondent as a son of the deceased in the eulogy, is proof on a balance of probabilities that the deceased was the father and a husband to the 1st and 2nd Respondents, respectively.

Orders

30. Accordingly, for the reasons set out above, the appeal is without merit and it is dismissed.

31. There shall be no orders as to Costs of the Appeal.

Orders accordingly.

DATED AND DELIVERED THIS 7TH DAY OF OCTOBER 2025.

EDWARD M. MURIITHI

JUDGE

Appearances:

Ms. Lumumba for the Appellant.

Ms. Natocho for the Respondent.