



In re Estate of Joel Kipkemoi Ngeno (Deceased) (Succession Cause E024 of 2021) [2025] KEHC 16269 (KLR) (11 November 2025) (Judgment)

Neutral citation: [2025] KEHC 16269 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BOMET
SUCCESSION CAUSE E024 OF 2021
JK NG'ARNG'AR, J
NOVEMBER 11, 2025
IN THE MATTER OF THE ESTATE OF JOEL KIPKEMOI NGENO (DECEASED)**

BETWEEN

TRACY CHEPKOSKEI NGENO PETITIONER

AND

ALICE CHEPKOSGEI NGENO OBJECTOR

JUDGMENT

1. In this matter, the Petitioner as the daughter of the deceased petitioned for Letters of Administration Intestate of the deceased on 14th June 2021. A Grant was issued in her name on 23rd June 2022.
2. The Objector filed Summons for Revocation of the Grant dated 3rd March 2023. The Objector wanted the Grant revoked on the ground that it was obtained fraudulently through non-disclosure of the fact that she was the deceased's first and legal wife.

The Objection

3. Through her Supporting Affidavit dated 3rd March 2023, the Objector stated that she was the deceased's first and legal wife and was entitled to be an administrator of the deceased's estate. The Objector further stated that the Petitioner's mother had divorced the deceased.
4. It was the Objector's case that the Petitioner's mother had collected the deceased's pension from the Judiciary without disclosing her legal position with the deceased.

Response

5. Through her Replying Affidavit dated 14th March 2023, the Petitioner stated that the deceased cohabited with the Objector and were blessed with two issues, Collins Kiplangat abd Renny Shermaine



whom she included as the deceased's beneficiaries. The Petitioner further stated that together with her siblings, they became aware of the Objector during the arrangements of the deceased's burial.

6. It was the Petitioner's case that upon investigations, they discovered that the Objector was legally married to one Robert Ngetich and had participated in his succession proceedings by transmitting his entire estate to herself. That the Objector could not be the deceased's legal wife and the mere cohabiting between themselves did not make the Objector the deceased's spouse. It was the Petitioner's further case that the deceased's family and clan members prevented the Objector from pouring soil during the deceased's burial, a ritual which was critical under the Kipsigis customary law.
7. The Petitioner stated that Chiefs were not vested under the law to determine marital status of a person. That the Petitioner's mother divorced the deceased. The Petitioner further stated that her mother had secured the deceased's benefits for her education and that of her fellow siblings and this was meant to prevent wastage or misuse.
8. It was the Petitioner's case that she included her siblings and step siblings in the present Petition and the Objector was aware of the proceedings. That the Objector had forced herself onto the deceased's parcels of land and tea plantation without the consent of the deceased's family.
9. The Objection was heard through viva voce evidence. I shall summarise the parties' case and their respective submissions in the succeeding paragraphs.

The Objector's Case

10. Alice Chepkoskei Kiget (Objector) testified as the first Objector's witness. She testified that she met the deceased way back in the year 1989. The Objector further testified that the deceased took him to his parents in the year 1991 and in 1992, they were blessed with one issue, Collins Kiplangat Kemoi.
11. It was the Objector's testimony that they used to visit each other in their work stations and they were blessed with another issue, Renny Chepngetich Ngeno. It was the Objector's testimony that after the burial of the deceased, the deceased's family formalized their marriage by paying dowry to her family and afterwards, her mother-in-law recognized her as the deceased's first wife and demarcated portions of land to her.
12. Ruth Tesot who was the deceased's mother testified that the Objector was the deceased's first wife having been introduced to her by the deceased. Ruth further testified that the Objector resided in the deceased's home and utilized the deceased's tea plantation. Ruth stated that the payment of dowry confirmed that the Objector was the deceased's first wife. This testimony was echoed by Ngeno Cheruiyot Simeon (Objector's 3rd witness) who was the deceased's brother.
13. Samwel Kononden (Objector's 4th witness) testified that he was a clan elder and that the Objector was the deceased's wife.
14. At the time of writing this Ruling, the Objector had not filed her written submissions.

The Petitioner's Case

15. Joel Terer (Petitioner's 1st witness) testified that the deceased had one wife, Linner Ngeno. Joel testified that when the Objector claimed to be the deceased's wife, they sat her down together with Linner Ngeno and asked them to prove the existence of their marriages to the deceased and Linner Ngeno tendered proof by showing her marriage certificate and names of the people who attended her dowry engagement ceremony. He further testified that the Objector did not prove her marriage to the deceased.



16. It was Joel's testimony that they conducted investigations and discovered that the Objector was married to Rober Ngetich and therefore could not be married to the deceased. This testimony was echoed by Joseph Kipkorir Ngeno (Petitioner's 2nd witness), Linner Jerotich Ngeno (Objector's 5th witness), David Kipkoech Too (Objector's 6th witness) and Tracy Chepkoskei Ngeno (Objector).
17. Through her written submissions dated 1st July 2025, the Petitioner submitted that the Objector was not a beneficiary of the deceased's estate. That the Objector was still married to Robert Ngetich (deceased) and no woman could marry two men at the same time. The Petitioner further submitted that Chiefs were a requirement in succession proceedings and the Chief's Letter proved that the Objector was married to Robert Ngetich.
18. It was the Petitioner's submission that this court should consider the tenets of Kipsigis customary law for a just determination of this matter. That this court should consider the allegation that the Objector was already married to another man, the Kipsigis burial rites, post humous marriages, the forceful and deceitful settlement in the deceased's property abd the fraudulent receipt of the deceased's pension. It was the Petitioner's further submission that the presence of children supposedly sired by the deceased did not grant the Objector marriage certification.
19. The Petitioner submitted that the wishes of her father were taken out of context by their grandmother and uncles who had embraced the Objector as the deceased's wife. That this led to bizarre incidents in the homestead which included bees stinging the cow and owls hanging in the Objector's house.
20. It was the Petitioner's submission that whether or not her mother divorced the deceased, the Kipsigis customary law in reinforced in law under sections 6 and 7 of the [Matrimonial Property Act](#). It was the Petitioner's further submission that in light of her mother's divorce from the deceased, she had capacity to file succession proceedings and she relied on Joseph Ombogi Ongetoto vs Martha Bosibori Ongetoto (2023) eKLR.
21. It was the Petitioner's submission that the Objector did not contribute anything towards the deceased's estate. It was her further submission that her inclusion of her two step siblings had been repudiated by the evidence of the clan members. That despite the deceased taking care of the two step siblings in his lifetime, he never assumed permanent responsibility over the two.
22. The Petitioner submitted that the cohabitation between the deceased and the Objector did not meet the threshold of assumption of marriage and relied on MNK vs POM (2023) eKLR and M.W.G v E.W.K (2010) eKLR. That the Objector and the deceased lacked capacity to enter into marriage since both had existing marriages. The Petitioner further submitted that the Objector did not refute evidence that she attended the funerals of the deceased and Robert Ngetich (deceased).
23. It was the Petitioner's submission that the Objector failed to prove the paternity of their two children and further did not prove her marriage to the deceased through production of a marriage certificate. It was the Petitioner's further submission that this court should not allow the Objector and her children to inherit from two spouses and fathers respectively. She relied on RWM v PMM (2021) eKLR and re estate of Gamaliel Otieno Onyiego (2018) eKLR. That the Objector was out to enrich herself
24. I have gone through the record, the Summons for Revocation dated 8th February 2025, the Replying Affidavit dated 14th March 2023 and the Petitioner's written submissions dated 1st July 2025. The sole issue for my determination was whether there were sufficient grounds to revoke the Grant dated 26th June 2022.
25. Section 76 of the [Law of Succession Act](#) which states that: -



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.

26. In the present case, the Objector stated that she was the deceased's first wife, a fact that the Petitioner vehemently denied. For the Objector to be successful, she had to prove that she was the deceased's wife and as a consequence of that, the Grant was obtained fraudulently via concealment of a material fact.

27. Section 6 of the Marriage Act provided the types of marriages in Kenya to wit: -

- (1) A marriage may be registered under this Act if it is celebrated—
 - (a) in accordance with the rites of a Christian denomination;
 - (b) as a civil marriage;
 - (c) in accordance with the customary rites relating to any of the communities in Kenya;
 - (d) in accordance with the Hindu rites and ceremonies; and
 - (e) in accordance with Islamic law.
- (2) A Christian, Hindu or civil marriage is monogamous.
- (3) A marriage celebrated under customary law or Islamic law is presumed to be polygamous or potentially polygamous.

28. The Objector testified that she met the deceased in the year 1991 and were blessed with two children. In relation to the Objector, I have looked at the evidence on record and there was no evidence to show the existence of a Christian, Islamic or Hindu marriage between the Objector and the deceased. That said, the Objector bore the burden of proving that she was married to the deceased through customary law. In *ASA v NA & another* [2020] KEHC 345 (KLR), Wendoh J. quoted the Court of Appeal case of *Kimani v Gikanga* [1965] EA 735 thus:-

“To summarise the position; this is a case between Africans and African customary law forms a part of the law of the land applicable to this case. As a matter of necessity, the customary



law must be accurately and definitely established. The Court has a wide discretion as to how this should be done but the onus to do so must be on the party who puts forward customary law. This might be done by reference to a book or document reference and would include a judicial decision but in view, especially of the present apparent lack in Kenya of authoritative text books on the subject, or any relevant case law, this would in practice usually mean that the party propounding customary law would have to call evidence to prove that customary law, as would prove the relevant facts of his case.”

29. Similarly, in *Rebecca Muthoni Kamau v Tabitha Muthoni Kamau* [2021] KEHC 3927 (KLR), Onyiego J. held: -

“Indeed, proof of the existence of a customary marriage is a matter of fact which must be substantiated by adduction of evidence. See *Gituanja vs Gituanja* (Supra) where the court stated that existence of a customary marriage is a matter of fact which must be proved by evidence and that the evidence adduced had proven a valid marriage under Kikuyu customary law as was expressed by the slaughter of the “Ngurario”.

Similar position was held in the case of *Hortensia Wanjiku Yawe Vs the Public Trustee* (Supra) in which Justice Kneller identified three important principles regarding proof of customary marriage as;

- (1) The onus of proving customary marriage is generally on the party who claims it
- (2) The standard of proof is the usual one for a civil action namely, one on the balance of probabilities
- (3) Evidence as to the formalities required for customary law marriages must be proved to the evidential standard.”

30. The Objector testified that her marriage to the deceased was formalized after the death of the deceased when the deceased’s family paid dowry to her family. This testimony was corroborated by the deceased’s mother Ruth Tesot (2nd Objector’s witness) and the clan Chairman, Samuel Arap Kononden (4th Objector’s witness). This meant that the deceased had not married the Objector under customary law during his lifetime. It is my finding therefore that the Objector did not discharge her burden of proof and failed to prove a customary marriage between her and the deceased.

31. However, from the testimonies of both the Petitioner’s and Objector’s witnesses, there was evidence that the Objector cohabited with the deceased.

32. The Supreme Court of Kenya in *MNK v POM; Initiative for Strategic Litigation in Africa (ISLA) (Amicus Curiae)* [2023] KESC 2 (KLR) held: -

“.....Presumption of marriage is a well-settled common law principle that long cohabitation of a man and woman with a general reputation as husband and wife raises a presumption that the parties have contracted marriage. However, a presumption of marriage is a rebuttable presumption and can disappear in the face of proof that no marriage existed.

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.”

Similarly, Bromley Family Law 5th Edition provides that:

“If a man and woman cohabit and hold themselves out as husband and wife, this in itself raises a presumption that they are legally married.”

Section 119 of the *Evidence Act*, cap 80 Laws of Kenya is also instructive. It 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 course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.”

From the foregoing, courts are permitted to make a prima facie legal inference that certain facts exist without proof, regard being taken to the common course of natural events and human conduct, in relation to the facts of a particular case.

The presumption of marriage was first applied in Kenya in *Hortensia Wanjiku Yawe v The Public Trustee Nairobi* [1976] eKLR. The principles distilled from this former Court of Appeal (Wambuzi P, Mustafa VP and Musoke JA) for East Africa decision were outlined in *Mary Njoki v John Kinyanjui Muthuru & 3 others, (Mary Njoki)* [1985] eKLR by Kneller JA as follows:

- 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)

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.” (Emphasis mine)

33. Similarly, the Court of Appeal in *Mary Wanjiku Githatu v Esther Wanjiru Kiarie* (2010) eKLR held: -

“The existence or otherwise of a marriage is a question of fact. Likewise, whether a marriage can be presumed is a question of fact. It is not dependent on any system of law except where by reason of a written law it is excluded. For instance, a marriage cannot be presumed in favour of any party in a relationship in which one of them is married under statute. However, in circumstances where parties do not lack capacity to marry, a marriage may be presumed if the facts and circumstances show the parties by long cohabitation or other circumstances evinced an intention of living together as husband and wife.”

34. As stated earlier, the Objector testified that she met the deceased in the year 1991 and were blessed with two children. The Objector further testified that she met the deceased in Molo and they stayed together with the deceased in Eldoret in the year 1994 where the deceased continued providing for his children. When the Objector was cross examined, she stated that from 1991 she had no other man in her life. Ruth Tesot (2nd Objector’s witness) who was the deceased’s mother testified that the deceased and the Objector lived together until the deceased became sick.

35. On the other hand, the Petitioner testified that she included the Objector’s two children as the beneficiaries of the deceased’s estate as the deceased had confided in her that he sired two issues with her. Additionally, the Petitioner in her Replying Affidavit dated 14th March 2023 stated that the deceased and the Objector cohabited and were blessed with two issues namely Collins Kiplangat and Renny Shermaine.

36. From the above, it was clear that the deceased and the Objector cohabited and sired two children. The first child was born in the year 1992 and the second child was born in 1995. The Objector testified that she was invited by the deceased’s family in the year 2017 due to the deceased’s failing health. The Objector did not testify what happened between them between the year 1995 and 2016.

37. On the other hand, Linner Cherotich Ngeno (5th Petitioner’s witness) testified that she married the deceased through a civil marriage in the year 1995 and lived with the deceased until the year 2016 when the deceased began threatening her because of his cohabitation with the Objector. When Linner was cross examined, she testified that the deceased deserted their home in 2017.

38. From the above analysis and guided by the authorities above, I find that the Objector and deceased were adults capable of entering into a marriage and their conduct signified the conduct of a husband and wife. This was evidenced by the birth of not one but two children from their union. Additionally, the cohabitation was long as Linner Ngeno stated that she initiated divorce proceedings in the year 2018 due to the cohabitation between the deceased and the Objector. In my view, this was no mistake on



the part of the deceased and the Objector and this court presumes the existence of a marriage between the deceased and the Objector. This fell within the ambit of section 119 of the Evidence Act which provided: -

The court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.

39. However, the above presumption was rebuttable. In the present case, the Petitioner stated that the Objector was married to one, Mr. Robert Ngetich and thus was incapable of entering into another marriage. In proving this claim, the Petitioner bore the burden of proof. Joel Terer (1st Petitioner's witness) testified that he was an elder and the deceased's uncle. Joel further testified that in July 2021, they went to visit a place where the Objector had been married and together with the Assistant Chief and Wilson Sitienei (3rd Petitioner's witness), they were told that the Objector was married to Robert Ngetich. When Joel was cross examined, he testified that Robert did not have a home in his mother's compound in Kipkelion and had been buried in Makueni where his wife was. Joel's testimony was echoed by the testimony of Joseph Kipkorir Ngeno (2nd Petitioner's witness).
40. David Kipkoech Too (6th Petitioner's witness) testified that he was the Chief, Bororwet Location and that the deceased's family members came to his office wanting to know the parents of Robert Ngetich. David further testified that he told them that the Objector was married Robert Ngetich in Ukambani. When David was cross examined, he testified that he did not know much about the marriage and that it was Robert Ngetich's siblings, Anna and her brother who gave him that information.
41. From the above, it is clear that the Chief's testimony regarding the Objector's alleged marriage to the deceased was based on hearsay. He was not the primary source of information and thus the Chief's testimony was inadmissible. The same applies to the other Petitioners' witnesses who all testified that they were informed of the Objector's marital status by the Chief and the Robert Ngetich's (deceased) mother. The very least the Petitioner could have done is present the siblings of relatives of Robert Ngetich (deceased) who could give direct testimony regarding the alleged marriage. In the circumstances, it is my finding that the Petitioner failed to prove that the Objector was married to Robert Ngetich (deceased) and the presumption of marriage between the deceased and the Objector still stands.
42. Flowing from the above, by virtue of section 29 of the Law of Succession Act, the Objector is classified as a beneficiary of the deceased's estate. It is my finding that the Petitioner concealed the fact that the Objector was the deceased's wife and a beneficiary of the estate of the deceased. Thus, the Grant can only be classified as defective as contemplated under section 76 of the Law of Succession Act.
43. In the end, I make the following orders: -
 - I. The Grant dated 23rd June 2022 is revoked.
 - II. A fresh Grant is hereby issued in the joint names of the Petitioner and the Objector.

JUDGEMENT DELIVERED, DATED AND SIGNED AT BOMET THIS 11TH DAY OF NOVEMBER, 2025.

.....

HON. JULIUS K. NG'ARNG'AR

JUDGE



Judgement delivered in the presence of:

Siele/Susan (Court Assistants).

E.K.Korir for the Petitioner

J.K. Koech for Objector

