

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

SUCCESSION CAUSE NO. E1354 OF 2021

IN THE MATTER OF THE ESTATE OF HERMANN

WINTER (DECEASED)

LUCY NJERI NJUGUNA

APPLICANT

VERSUS

PAULINE WINTER 1ST

RESPONDENT

AKINYI ZAITUN MUSA 2ND

RESPONDENT

MUSA KOMBO ASMAN 3RD

RESPONDENT

RULING

1. Herman Winter died on 30th June, 2020. He left a Written Will dated 11th January, 2010. His widow, Pauline Hunter, was named as the sole heir. His son, Eduard Hunter, was named as the substitute heir.
2. Pauline petitioned for Letters of Administration with a Written Will. Thereafter, she and Akinyi Zaituni Musa and Musa Kombo Asman entered into a consent that resulted in the latter two being added as co-administrators of the deceased's estate. The new Grant was issued on 4th March, 2025. This followed an application dated 23rd July, 2024 in which the Applicants (Zaituni and Musa) asked to be appointed as additional administrators alongside Pauline, to act as trustees on behalf of **C.A.A.** (Minor), a daughter of the deceased.
3. The grant is pending confirmation.
4. Before the Court is an application dated 24th June, 2025, by Lucy Njeri Njuguna (the Applicant), in which she requests to be enjoined as a beneficiary of the estate. Lucy states in her supporting affidavit that she lived with the deceased as husband and wife from 2014 until his death in 2020.

5. The issue for determination is whether the Applicant has made out a good case for her inclusion as a beneficiary.
6. The deceased was legally married to Pauline Hunter as shown in the marriage certificate dated 30th May, 1970. She is the named sole heir in the Will left by the deceased.
7. The Applicant contends that she is entitled to benefit from the deceased's estate after cohabiting with him since 2014 until his death. The evidence presented in her annexures is that she lived with the deceased in a house at Sun Sea Village/Estate.
8. The Administrators, in their affidavits, describe the Applicant as a caretaker who is exploiting the situation to assert a claim over the estate.
9. **Section 29** of the **Law of Succession Act** defines a dependant as follows;

Meaning of dependant

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) where the deceased was a woman, her husband if he was being maintained by her immediately prior to the date of her death.

10. Presumption of marriage is a common law principle under which long cohabitation of a man and woman, with a general reputation as husband and wife, raises a rebuttable presumption that they have contracted a marriage.

11. The parameters of a marriage by presumption were set out by the Supreme Court in the case of **MNK v POM; Initiative for Strategic Litigation in Africa (ISLA) (Amicus Curiae) (Petition 9 of 2021) [2023] KESC 2 (KLR)** as follows:

- a. The parties must have lived together for a long period of 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 is on the party who alleges it.*
- g. The evidence to rebut the presumption has to be strong, distinct, satisfactory and conclusive.*
- h. The standard of proof is on a balance of probabilities.*

12. The Court in the case of **Phylis Njoki Karanja & 2 others v Rosemary Mueni Karanja & another [2009] eKLR** held that the presumption of marriage could be drawn from two conjoined factors, namely, long cohabitation and acts of general repute. It stated that;

“Before a 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.”

13. The deceased, an Austrian citizen, passed away in Ukunda, Kenya. He was legally married to Pauline, the 1st Administrator of his estate, and there is no evidence that his time in Kenya severed their marriage. The deceased visited Austria despite residing in Kenya, reportedly travelling there three times a year.
14. The living arrangement between the Applicant and the deceased must be examined alongside acts of general repute.
15. While the responsibilities listed in annexures LNN1a and LNN1b, such as maintaining the house, tending the garden, and ensuring security arrangements, are essential, they do not necessarily form strong indicators for marriage repute. These tasks can be accomplished by

individuals sharing a living space without any plans for marriage, or even by an employee.

16. 'Being seen with', as is stated in the Chief's Letter, can mean being with a friend without implying marriage.

It still isn't sufficient.

17. A clear expression of their intent, such as to family members or neighbours or through joint financial commitments, financial dependency, mutual support, or even some documentation, would be necessary to establish an intention to hold the relationship as a marriage.

18. The proof of presumption of marriage is on a balance of probability; the applicant has not presented credible evidence that their living arrangement can transition into a marital relationship. Her continued stay in that house does not confer upon her a beneficiary status.

19. The deceased had no capacity to enter into another marriage during the subsistence of the marriage to Pauline (1st Administrator). His Written Will, favouring Pauline and naming her as his wife and the sole heir, is not contested. The terms of the Will clearly demonstrate

his acknowledgement of his marriage to her and can be interpreted as an intention not to enter into another marriage, whether with the Applicant or anyone else. Had he intended to pursue a marital relationship, he would likely have taken the necessary steps in that direction or drafted a new Will in Kenya.

20. The application lacks merit and is dismissed with costs to the Respondents.

21. It is so ordered.

DATED, DELIVERED and SIGNED at NAIROBI through the Microsoft Teams Online Platform on this 1ST day of DECEMBER, 2025.

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C. KENDAGOR

JUDGE

In the presence of:

Court Assistant: Beryl

Mr. Kamau , Advocate for interested party/Applicant

Mr. Makambo, Advocate for Zaitun and Musa, co-administrators

Ms. Mumbi. Advocate for Pauline, Administrator

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