



REPUBLIC OF KENYA



**In re Estate of Irene Wanjiru Muraguri (Deceased) (Succession Cause 2691 of 2009)  
[2025] KEHC 18947 (KLR) (Family) (18 December 2025) (Judgment)**

Neutral citation: [2025] KEHC 18947 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**FAMILY**

**SUCCESSION CAUSE 2691 OF 2009**

**CJ KENDAGOR, J**

**DECEMBER 18, 2025**

**ESTATE OF IRINE WANJIRU MURAGURI (DECEASED)**

**BETWEEN**

**MONICA KATUNGE KASINGA ..... APPLICANT**

**AND**

**CATHERINE WANGARI MURAGURI ..... 1<sup>ST</sup> RESPONDENT**

**LILIAN GATHIGIA MURAGURI ..... 2<sup>ND</sup> RESPONDENT**

**ESTHER NJAMBI MURAGURI ..... 3<sup>RD</sup> RESPONDENT**

**JUDGMENT**

1. Irene Wanjiru Muraguri (the Deceased) died in the year 2009. She had several properties, and one of them was Maisonette No. 1 situate on LR No. 209/5457/3 (the Maisonette), which forms the subject of the current dispute. The Respondents are her daughters while the Interested Party is her son. The Applicant and the Interested Party have a child together. The 1<sup>st</sup> and 2<sup>nd</sup> Respondent obtained letters of administration and the Court confirmed the grant on 30<sup>th</sup> October, 2012, in which it allocated the Maisonette to the Interested Party to be registered as proprietor with life interest.
2. The Grant was later rectified on 22<sup>nd</sup> July, 2015, in which the Maisonette bequeathment was changed from the Interested Party and given to the 3<sup>rd</sup> Respondent, to hold it absolutely. The Applicant contests the said rectification and brought the instant application dated 3<sup>rd</sup> April, 2023 seeking revocation of the grant on grounds that the rectification was fraudulent and goes against the express wishes of the Deceased. She deponed two affidavits in support her claim, one dated 3<sup>rd</sup> April, 2023 and another one dated 18<sup>th</sup> July. She also attached numerous annexures to augment her position.



3. The application is opposed. The 2<sup>nd</sup> Respondent filed a replying affidavit dated 3<sup>rd</sup> July, 2023 in which she asked the Court to strike out the application for lack of merit. The 3<sup>rd</sup> Respondent similarly opposed the application through a replying affidavit dated 5<sup>th</sup> November, 2023, and sworn by her. She averred that the application is incompetent, arguing that that Applicant is a stranger who has no legal or equitable interest in the estate. The Interested Party also opposed the application through a replying affidavit dated 3<sup>rd</sup> July, 2023 and sworn by him, in which he urged the Court to strike out the Application.
4. The application went to full hearing and the parties appeared before the Court during which they gave their oral testimonies.

### **The Applicant's Case**

5. The Applicant averred that she was married to the Interested Party under a traditional marriage. She stated that the Deceased bequeathed the Maisonette to the Interested Party as a gift inter vivos and that she resided on the Maisonette with the Interested Party during their marriage, as their matrimonial home. She averred that the Court confirmed the grant in 2012, in which it gave the Maisonette to the Interested Party, as the registered proprietor with a life interest. She stated that her union with the Interested Party started having troubles in 2015, as a result of which the Interested Party moved out of the Maisonette.
6. She averred that consequently, the Respondents and the Interested Party began to frustrate her occupation of the Maisonette. She stated that the Respondents rectified the grant to ensure that the Maisonette is removed from the Interested Party and transferred to the 3<sup>rd</sup> Respondent. She claimed that the rectification was done without the knowledge and consent of the Interested Party, stating that the Interested Party was at a rehabilitation centre at the time the said grant was being rectified. She averred that the Interested Party, with her assistance, lodged a caution on the Maisonette upon realizing the fraudulent rectification.
7. She stated that the Respondents attempted to evict her and her child from the Maisonette in June 2015, which necessitated her obtaining a Court order to prevent the eviction. She averred that she has been in occupation and has singlehandedly borne all expenses for the maintenance of the household. She also stated that the caution/caveat remains in place to date, 6 years after lodgment. She averred that the caution was not fraudulently placed on the Maisonette, arguing that if that were the case, nothing would have been easier than for the Interested Party to remove the same.

### **The Respondent's Case**

8. The 2<sup>nd</sup> Respondent averred that the Applicant lacks locus to bring the application, arguing that the Applicant was never a wife to the Interested Party. She stated that the Applicant is using her daughter with the Interested Party to target any property in the name of the latter. She stated that the Applicant forced them out of the Maisonette and committed fraud by passing an unlawful caveat purporting to originate from the Interested Party. Lastly, she argued that a Certificate of confirmation of grant is neither a grant nor an equivalent of it, through which it can be revoked by Section 76 of the [\*Law of Succession Act\*](#).
9. The 3<sup>rd</sup> Respondent claimed that she was rightfully bequeathed the Maisonette as the beneficiary of the estate, and as such her legal interest has crystalized. She stated that the Applicant lacks locus because she claims to be a beneficiary of the estate of the Deceased without any proof of kinship or dependency. She averred that the Applicant was only basing her claim on a presupposed cohabitation with the Interested Party. She argued that the applicant's remedy lies elsewhere as she has not tendered evidence



to demonstrate that the proceedings to confirm and rectify the grant should be cancelled in the terms of Section 76 of *Law of Succession Act*.

### **The Interested Party's Case**

10. The Interested Party stated that the Applicant lacks locus standi to institute the application, arguing that she is neither an interested party under Section 76 of LSA nor is she a beneficiary of the estate of the Deceased. He averred that he never married the Applicant and that she was only his girlfriend, with whom they had one child. He stated that he was never bequeathed the Maisonette and that he has no proprietary interest in the same. He averred that the Maisonette was not fraudulently transferred from him to the 3<sup>rd</sup> Respondent, arguing that the grant was rectified with his full knowledge and presence.

### **Submissions and Issues for Determination**

11. The parties filed their respective submissions which the Court has considered at length. Upon considering the pleadings, the various affidavits, and the respective submissions, I find that the only issue for determination is whether the Applicant has made sufficient grounds for the revocation of the Grant.

### **Evidence on Record**

12. The parties testified before this Court, and this is a summary of their testimonies.

### **Applicant's Testimony**

13. A.W.1 was the Applicant. She stated that she is a wife to the Interested Party, though currently separated. She stated that there is a presumption of marriage because she lived with the Interested Party as husband and wife. She stated that she lived with the Interested Party in South Africa for 4 years from 2007. She told the Court that, upon their return to Kenya in December, 2010, they lived together in the Maisonette as a husband and wife for over 8 years. She stated that she was known to the Interested Party's family and that she attended the Deceased's funeral in August, 2009.
14. She stated that they had started the rites of a traditional marriage. She stated that in August, 2011, the Interested Party and his relatives visited her family home in Karen to see her parents, during which the Interested Party's relatives confirmed that she was going to live with him. She stated that the Interested Party was accompanied by his relatives; Peter Wahome, Mwaura Njenga, Esther Njambi Mwangi, and John Mwangi. She stated that during the visit, Peter Wahome, who is Interested Party's senior cousin, gave an envelope to her relatives. She however admitted that she did not have a marriage certificate.
15. She stated that the Interested Party deponed and signed the affidavit dated 20<sup>th</sup> May, 2017 in support of his application to place the caveat in the Maisonette. She stated that there is no complaint that the signature on the affidavit was forged, and that the Interested Party has not shown that he did not voluntarily execute the same. She stated that she was present when they went to see Counsel George together, who helped the Interested Party place the caveat on the Maisonette. She maintained that the Interested Party was not in rehab when the caveat was placed and that she was with him when he placed it.
16. She stated that the rectification of the grant was done fraudulently and against the lower Court's orders of 17<sup>th</sup> June, 2015. She also stated that she placed a caveat but she later withdrew the same. On cross-examination, she admitted that she did not have the evidence in court. She stated that the title does not show the entry of the caveat, yet a search conducted on the Maisonette on 29<sup>th</sup> May, 2017 showed the caveat. She also stated that a search conducted on the Maisonette on 23<sup>rd</sup> September, 2024 shows



that there are no encumbrances, yet the title shows that there is an entry of a court order restraining any dealing on the Maisonette.

### **Interested Party's Testimony**

17. RW1 was the Interested Party. He stated that he started dating the Applicant around 2003 and that his mother, the Deceased, knew the Applicant as his long-term girlfriend. He stated that their families knew each other and that the Applicant and her mother attended his mother's burial. He stated that they lived with the Applicant in South Africa for 2 years and they later moved in to the Maisonette in 2010 during which their daughter was born. He stated that the Applicant moved into the Maisonette with his knowledge, permission, and authority. He, however, maintained that he did not marry her.
18. He stated that the Maisonette was given to him in the grant by mistake. He stated that they had discussed as a family and agreed that the Maisonette should go to the 3<sup>rd</sup> Respondent and that the latter knew that it would be given to her. On cross-examination, he stated that he is not aware whether the 3<sup>rd</sup> Respondent objected to the grant when she realized that the Maisonette had been given to the Interested Party. He also admitted that no one raised an issue about the confirmed grant between 2012 and 2015.
19. He stated that he agreed to the rectification of the grant and that he was in Court during the rectification. He also stated that, at the time of the rectification, he was residing in the Maisonette with the Applicant and their daughter. On cross-examination, he stated that the summons for rectification was filed two weeks after the lower Court had issued court orders regarding the Maisonette. He also admitted that they did not indicate in the rectification documents that the Children Court had made an order touching on the Maisonette. He however maintained that the rectification was not because of the Court order.
20. He also stated that the affidavit alleged to have been deponed by him on 20<sup>th</sup> March, 2017 is a forgery, claiming that he was in a rehab at that time and he was neither visited by the advocate nor was he taken to meet him. On cross-examination, he admitted that although the alleged forgery had been brought to his knowledge, had not followed it up and he had not lodged a complaint. He also stated that the caveat lodged at the lands registry in his name was a forgery. He however admitted that he has not followed up at the Registries and he had not complained to the DCI about the caveat being lodged against his will.

### **2<sup>nd</sup> Respondent's Testimony**

21. She is an administrator of the Estate. She stated that, in 2012, they sat as beneficiaries and they all agreed that the Maisonette was to go to the Interested Party. She told the Court that they later decided it was an anomaly and a mistake, stating that the Maisonette should have gone to the 3<sup>rd</sup> Respondent. She stated that she gave instructions for rectification on 1<sup>st</sup> July, 2015. She told the court that the 3<sup>rd</sup> Respondent evicted the Applicant in June 2015 before the rectification. She admitted that the 3<sup>rd</sup> Respondent did not legally own the Maisonette at that time, although all the beneficiaries had agreed to give it to her.
22. She stated that, at the time of the rectification, she knew that a Court order had been issued touching on the Maisonette and directing that the Minor be returned to the Maisonette or be provided with an alternative shelter. She also told the Court that, at the time of the rectification, she was aware of the circumstances under which the 3<sup>rd</sup> Respondent temporarily evicted the Applicant from the Maisonette. She also admitted that she did not disclose that information in the summons for rectification. She also told the Court that, at the time of the rectification, the Applicant and her daughter were living on the Maisonette, but they did not inform her about the rectification.



### 3<sup>rd</sup> Respondent's Testimony

23. She stated that it was within her knowledge that the Applicant was in a relationship with the Interested Party. She also admitted that the Applicant attended the Deceased's burial. She stated that by 2012, the Applicant and the Interested Party were living in the Maisonette. She told the Court that in during the confirmation in 2012, the Maisonette was given to the Interested Party because that is what they agreed on at that time. She also stated that, at the time of the rectification, the Applicant, her daughter, and the Interested Party were living in the Maisonette.
24. She stated that they realized the mistake about the 2012 Grant in 2013 but they did not rectify immediately because there was no urgency. She also admitted that the summons for rectification and the supporting affidavit do not indicate or disclose the mistake. She stated that, at the time she evicted the Applicant from the Maisonette, the house was still under the Deceased's name. She also admitted that she did not involve/inform the Applicant about the rectification and the subsequent registration in her name.

### Whether the Applicant has made sufficient grounds for the revocation of the grant

25. I now turn to consider the main issue for determination which is whether the Applicant has established a case for revocation of grant. Section 76 of the Law of Succession Act Cap 160 provides for factors which may lead to the revocation of a grant. The Section provides;

“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”.

26. The Court in *Jamleck Maina Njoroge v Mary Wanjiru Mwangi* [2015] eKLR, interpreted the above provision and stated as follows;

“The circumstances that can lead to the revocation of grant have been set out in Section 76 Law of Succession. 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.”

27. The Applicant bears the burden of proof on this issue and she is required to tender evidence to prove that the proceedings were defective or that there was fraud and/or that something material was



concealed from the court. This is in line with Section 107 of the *Evidence Act* Cap 80 Laws of Kenya provides that he who alleges must prove. This burden of proof, it provides:-

- “(1) 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.
- (2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.”

28. The Applicant is claiming that the Interested Party was entitled to the Maisonette. She asserts that she seeks to secure her interests, as well as those of her Child with the Interested Party.

29. For a person to get a share of the estate of a deceased, he/she must prove dependency as provided under Section 29 of the Act, which provides:-

“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, grand-parents, 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.”

30. The Court in *In re Estate of Kathari Kathitu (Deceased) [2019] KEHC 9637 (KLR)* faced a similar question and observed as follows;

“The applicant had no priority in the estate. She had to prove that she was a dependant. She is not claiming as dependant but that the deceased held two acres for her deceased husband. My view is that since her claim is not as dependant, she ought to have filed a suit against the administrator of the estate. This court has no jurisdiction to entertain claims on land. A Succession court is concerned with intestate and testamentary succession and administration of estates of deceased persons.”

31. Similarly, the Court in *Mabanga v Maho (Civil Appeal 34 of 2020) [2023] KEHC 1860 (KLR)* observed as follows;

“Having found that it has not been established that the children of respondent belonged to deceased and were his dependants under section 29 of the *law of succession Act*, I find that the respondent did not establish grounds for revocation of grant under section 76 of the *law of Succession Act*.”

32. In the instant case, the parties agree that the Minor had not been born by the time the Deceased passed on. That fact alone rules out the possibility of the minor being a dependant within the ambit of Section 29 of the *Law of Succession Act*.

33. In addition, the Applicant herself does not fall within the categories of the persons enumerated as dependants under Section 29.



34. The Applicant claimed that she was married to the Interested Party and they cohabited on the Maisonette from 2010 to 2015. She claims that the said Maisonette became a matrimonial home and hence she has proprietary interests in it. However, the Interested Party contests the alleged marriage with the Applicant.
35. In my view, this Court sitting as a Succession Court in this Probate File is not the appropriate forum to make a determination on the existence or non-existence of the disputed marriage between the Interested Party and the Applicant. The Applicant is at liberty to approach the appropriate court to determine whether there was a marriage between her and the Interested Party. She is also at liberty to initiate proceedings in the proper forum to determine whether she has acquired any proprietary interests in the Maisonette.
36. The orders issued by the Children's Court pertained specifically to issues surrounding the minor's welfare rather than the aspects of estate succession or inheritance. This distinction is very important.
37. There is no dispute that the Deceased was the registered proprietor of the Maisonette. She died intestate. There is no dispute among the deceased's dependants regarding the distribution of the estate. At present, no other interest has been successfully lodged that could challenge their collective agreement regarding the distribution of the estate.
38. For the reasons stated herein, I find that the Applicant has not proved any of the grounds under Section 76 of the Law of Succession Act to warrant this Court to order revocation of the Grant.

#### **Disposition**

39. The Application seeking revocation of the Grant is dismissed with no orders as to costs.
40. It is so ordered.

**DATED, DELIVERED AND SIGNED AT NAIROBI THROUGH THE MICROSOFT TEAMS ONLINE PLATFORM ON THIS 18<sup>TH</sup> DAY OF DECEMBER, 2025.**

.....

**C. KENDAGOR**

**JUDGE**

In the presence of:

Court Assistant: Beryl

Ms Amutavi holding brief for Mr Okatch, Advocate for Applicant.

Ms Alwanga Advocate holding brief for Mr Odhiambo Advocate for the 1<sup>st</sup> and 2<sup>nd</sup> Respondent and Interested Party.

Mr. Kyalo holding brief for Mr Otwal, Advocate for 3<sup>rd</sup> Respondent.

