In re Estate of Cyrus Dickson Mwangi (Deceased) (Succession Cause 290 of 2020) [2026] KEHC 518 (KLR) (Family) (29 January 2026) (Judgment)

Neutral citation: [2026] KEHC 518 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

FAMILY

SUCCESSION CAUSE 290 OF 2020

HK CHEMITEI, J

JANUARY 29, 2026

IN THE MATTER THE ESTATE OF CYRUS DICKSON MWANGI

(DECEASED)

BETWEEN

PRISCILA WANJUKU MWANGI ..... 1ST APPLICANT

WACHIRA KIMANYA MWANGI ..... 2ND APPLICANT

AND

CHARITY WANGUI MWANGI ..... 1ST PETITIONER

ALFRED NDANI MWANGI ..... 2ND PETITIONER

JANET JAEL WANJIRU MWANGI ..... 3RD PETITIONER

JUDGMENT

1. The deceased herein died on 16th March 2020 at Mater hospital. The Respondents jointly applied for letters of administration in this estate claiming to be wife and children of the deceased.

2. The court on 8th September 2020 granted them a joint letters of administration. They subsequently sought to have the same confirmed via their application dated 10th March 2021.

3. The Applicants filed objection proceedings dated 29th April 2021 seeking to have the grant revoked on the grounds that the Respondent did not disclose to the court their existence and that the deceased had left a Will dated 27th April 1999.

4. The court directed that the objection be determined by way of viva voce evidence.

Objectors Evidence

5. PW1 (Priscilla Wanjuku Mwangi) adopted her application and witness statement and produced documents as exhibits. She stated that she was married to the deceased under Kikuyu customary law on 27th September, 1974 and lived with him for about 46 years until his death in March 2020.

6. In cross-examination, she acknowledged hearing that the deceased had earlier married Charity in 1969 and separated around 1971 and maintained that she did not know of that marriage when she married the deceased. She testified that she and the deceased acquired property as a family, though key property was registered in his name, and that when they married, he had a Peugeot 404 and worked at Kenya Airways.

7. PW2 (Simon Maina Wahome), Priscilla's brother, adopted his statement and asserted that customary marriage rites were undertaken, including a ruracio, and that he had records of dowry. He stated that the ruracio took place at his home, that the deceased was absent due to illness but was represented and that this was a customary ceremony rather than a mere meeting. He emphasized that representation is acceptable where the groom is unwell and that the deceased was in a wheelchair at the time.

8. PW3 (Beatrice Muthoni Mureithi), a niece to the deceased and related to Priscilla, adopted her statement and said she had lived at the homestead and continued to stay there at times. In cross-examination, she maintained that the deceased and Priscilla lived together as husband and wife at that home and that she had not seen any other wife.

9. PW4 (Grace Wanjiku Mwangi), a long-time friend of Priscilla since 1989, adopted her statement and testified that she visited the couple at South B (Balozi House No. 16), knew they had three children and never encountered any other family or wife, including during hospital visits.

10. PW5 (Stanley Wachira Ndatchu), an uncle/nephew relation to the deceased through Priscilla, adopted his statement and said he had known the deceased since 1974 and stated that he first saw Charity at Mater Hospital the day after the deceased died, when she quarreled with Priscilla. He maintained he had not known Charity previously.

Petitioners Case

11. DW1 (Charity Wanjiru Mwangi) adopted her statement and asserted she married the deceased in October 1969 and that she never separated from him and they lived at South C Heshima Estate where they raised four children.

12. She stated that the deceased died on 16th March, 2020 and was cremated at Kariokor without her involvement.

13. In cross-examination, she conceded she filed a separation petition in 1987 but claimed it was resolved by parents and they were not separated. She also gave mixed testimony on timelines (including stating elsewhere that she had lived separately since 1971 in an affidavit), acknowledged knowledge of an alleged will through an advocate but said she had not seen it and was told she received nothing under it and admitted that she later learnt the deceased had accounts and NHIF links with Priscilla while emphasizing that joint accounts or NHIF dependency do not prove marriage.

14. She testified that she objected to cremation and had desired a burial but she was not informed of the cremation and was not invited to any customary ceremony, though she acknowledged existence of photographs of a ram-slaughter ceremony.

15. DW2 (Alfred Ndani Mwangi), a son of Charity and the deceased, adopted his statement and stated that the deceased provided for their upbringing. He said the family learnt the deceased had been cremated at night (about 2:00 a.m.) without their knowledge, contrary to their plan for a "decent send-off" and what he understood to be the deceased's wish to be buried in Nyeri/Karatina on ancestral land.

16. He said that he was unaware of any Will, but later learnt of one that excludes them. He also referred to other beneficiaries (Benevolent and Maingi Deovelente) who allegedly predeceased the deceased and suggested the will should be revisited.

17. In cross-examination, he maintained the deceased lived with Charity in South C, became ill from the late 1990s, was bedridden at South C, denied the deceased lived in Ruai with the objector, acknowledged photographs showing a ram-slaughter ceremony but said they were unclear and conceded that the will (as he had seen it) states the deceased wished to be cremated even though he believed the deceased had earlier told them he wanted burial in Nyeri.

18. DW3 (Jane Jael Wanjiru Mwangi), the deceased's daughter, adopted her statement and asserted the deceased was a Christian who never expressed a wish to be cremated and wanted burial in Nyeri and that cremation occurred at night within 48 hours without family participation or prayers.

19. She challenged the alleged Will as unjust and inconsistent with the deceased's character and urged rejection of it, alleging the Objectors were hostile.

20. In cross-examination, she confirmed a good relationship with the deceased, stated that he lived in South C until hospital admission, acknowledged hospital records that described Priscilla as the deceased's caregiver/wife but argued the hospital could not determine marital status.

21. She admitted that the Will was drawn in 1999 when she was young and the deceased was already unwell and denied knowledge of him living in Ruai and commented on chief's letters and location differences (Dandora versus Ruai) while maintaining that the photos relied upon did not, in her view, prove a proper ruracio.

22. The Objectors have filed written submissions dated 14th October, 2025 and the Respondents have filed written submissions dated 29th October, 2025.

Analysis and Determination

23. I have read the application before this court, the responses thereto and the rival submissions.

24. In re Estate of Joshua Githiari Kibui (Deceased) [2021] eKLR the court stated as follows:

> " 18. For avoidance of doubt, Section 76 of the *Law of Succession Act* states as follows:
>
> a. 76. Revocation or annulment of Grant
>
> b. 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—

20. Further, In the Matter of the Estate of L A K – (Deceased) [2014] eKLR the court held that;

(a) Revocation of grants in governed by Section 76 of the *Law of Succession Act*. The relevant portions of Section 76 are paragraphs (a), (b) and (c) since the issues raised relate to the process of the making of a grant. A grant may be revoked where the proceedings leading up to its making were defective, or were attended by fraud and concealment of important matter, or was obtained by an untrue allegation of a fact essential to the point.

32. The court in the case of Jamleck Maina Njoroge v Mary Wanjiru Mwangi (2015) eKLR at paragraph 11 of its ruling in revoking a grant reiterated the grounds upon which a grant can be revoked. It stated as follows:-

a. "11. 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."

33. In the case of Matheka and Another vs Matheka [2005] 2KLR 455 the Court of Appeal laid down the following guiding principles as to revocation of grants.

(a) "i. A grant may be revoked either by application by an interested party or by the court on its own motion.

(b) ii. Even when revocation is by the court upon its 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 the making of a false statement or by concealment of something material to the case or that the grant was obtained by means of untrue allegation of facts essential in point of law or that the person named in the grant has failed

to apply for confirmation or to proceed diligently with the administration of the estate."

25. In re Estate of Samuel Ngugi Mbugua (Deceased) [2018] eKLR where the court stated as follows: "Testamentary freedom of a testator can only go as far as it is not in contravention of the laws of the land."

26. John Wagura Ikiki & 7 others v Lee Gachigia Muthoga [2019] KECA 751 (KLR) where the court quoted with approval Honourable Justice Githinji in Karanja & another v Karanja [1999] KEHC 181 (KLR) where it was held that: "Where the will is regular on the face of it with an attestation clause and signatures of attesting witnesses and the signature of the testator, there is a rebuttable presumption of due execution (Omnia esse riteatta)."

27. The Applicants contend that the grant issued on 8th September, 2020 was founded on a false premise of intestacy and/or material non-disclosure because the deceased allegedly died testate, having executed a will dated 27th April, 1999 which expressly excluded the 1st Respondent and her children and because Wachira Kimanya Mwangi is said to be the deceased's son and an Executor named in the Will.

28. On the other hand, the Respondents' assert a subsisting statutory marriage solemnized in 1969, never dissolved by divorce, with the deceased allegedly cohabiting at the matrimonial home until death. They deny the Objectors' status as widow/children and argue that the Objectors surfaced late and engaged in intermeddling, including removal of the body and cremation.

29. In viva voce testimony, the Objectors led evidence of long cohabitation and Kikuyu customary rites (ruracio/ngurario) and caregiving during the deceased's final illness, while the Respondents led evidence of continued statutory marriage, asserted non-involvement in the customary rites (including the deceased's brother disputing participation) and questioned the authenticity/justice of the will and the circumstances of cremation.

30. Although the parties heavily dwelt in their testimonies on their relationship with the deceased, either as a father and or husband, I think what is germane in this cause is the question of whether the deceased died testate or intestate. Once this question is answered then the other issues can follow.

31. The court must interrogate the Wills formal validity, capacity, voluntariness and whether any later revocation/alteration occurred, because the Respondents' challenge is not merely technical but goes to the will's legitimacy and fairness.

32. The validity of the Will is anchored under the provisions of Section 11 of Cap 160 which states as hereunder;

> " 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."

33. Looking at the original Will produced without any contestation, the same is dated 27th April 1999 and prepared by one P.S.K KIMITI Advocate who went ahead and signed it as well as one Hannah Njeri and it was signed by the deceased.

34. In terms of attestation the two witnesses suffice as per the cited provisions above. Coupled with this, there was no objection to the production of the said Will.

35. In my view therefore the Will herein was in all fours with the provisions of Section 11 of the Act.

36. There was no evidence of any incapacity on the part of the testator. Although later it was stated that he was unwell, there is no evidence that it caused any incapacity to the extent that he could not prepare the Will.

37. There was an argument by the Petitioners that the deceased ought not to have been cremated and that he ought to have been buried somewhere in his ancestral home in Nyeri.

38. The Will states otherwise. Clause 6 and 7 of the Will dated 27th April, 1999, as follows: "... 6. Upon my death my body shall become property of my said sons and shall be CREMATED. 7. I hereby declare that neither my former wife Charity Wangui daughter of Wedson Weru (who deserted me in 1970) nor any of her children shall inherit me in anyway howsoever."

39. To the extent that the deceased had capacity to prepare his Will, he had every reason to say what he wanted and his wish after death. In any event it was the Objector who was with him from the period of admission till he passed on.

40. I think the court has stated much to show that the deceased died testate and the application by the Respondents vide intestate proceedings must be set aside.

41. As mentioned earlier much has been stated by the parties concerning how he treated them and so on. Nonetheless the substantive issue here is the Will and nothing else. The Petitioners probably might need to raise some of those issues elsewhere since the Will in my view is valid.

42. In the premises I order that:

    (a) The grant of letters of administration issued to the Respondents on 8th September 2020 is hereby set aside for all intent and purposes.

    (b) The Will dated 27th April 1999 prepared by the deceased herein is hereby declared valid and the Executor Maingi Kimanya Mwangi and Wachira Kimanya Mwangi are at liberty to apply.

    (c) Costs to the Objectors.

DATED SIGNED AND DELIVERED VIA VIDEO LINK AT NAIROBI THIS 29TH DAY OF JANUARY 2026.

H K CHEMITEI

JUDGE