



REPUBLIC OF KENYA



**In re Estate of Cyrus Muchina Karaka (Deceased) (Succession Cause E3345 of 2022)  
[2026] KEHC 1532 (KLR) (Family) (13 February 2026) (Judgment)**

Neutral citation: [2026] KEHC 1532 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
SUCCESSION CAUSE E3345 OF 2022  
PM NYAUNDI, J  
FEBRUARY 13, 2026  
IN THE MATTER OF THE ESTATE OF CYRUS MUCHINA KARAKA(DECEASED)**

**JUDGMENT**

1. The Applicant herein vide Summons dated 21<sup>st</sup> March 2024 seeks revocation of the grant issued to the respondent on 8<sup>th</sup> November 2023 on the following grounds-
  - a. That the Petitioner/ Respondent obtained the grant fraudulently by the making of a false statement or by the concealment from the court of something material to the case.
  - b. That the Petitioner/ Respondent obtained the grant 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.
  - c. That the proceedings to obtain the grant were defective in substance.
  - d. That the Petitioner/ Respondent initiated this (sic) proceedings to obtain the grant an Intestate estate under Part V on intestacy knowing very well that the deceased left behind a will.
  - e. That the Petitioner/ Respondent has concealed to this Court the fact that the deceased had distributed his estate by way of will and attempted to proceed with the succession and indeed confirmation of grant as an intestate proceeding.
  - f. That in obtaining the grant the Petitioner/ Respondent failed to disclose all the beneficiaries of the deceased
  - g. That the deceased left behind a will
  - h. That the applicant and the Petitioner/ Respondent be appointed as administration (sic) with a will annexed



- i. That following the appointment of the applicant and the Petitioner/ Respondent as administrators of the will (sic).
2. The applicant has sworn an affidavit on even date in which she avers that she is a spouse of the deceased. That the respondent in Petitioning for the grant failed to disclose that the deceased left behind a will and also has excluded some beneficiaries. She avers further that the proposal on mode of distribution does not conform with the wishes of the deceased.
3. The respondent has sworn an affidavit in opposition dated 7<sup>th</sup> May 2024 and 28<sup>th</sup> March 2024. She contends that the applicant does not have a valid marriage with the deceased. That at the time of his death her marriage with the deceased was subsisting. She challenges the validity of the will and states that the property in question (Nairobi/Umoja/Block 109/544) being a matrimonial home was not available to the deceased to bequeath in the manner he purported to.
4. The applicant has sworn a further affidavit, stating that the applicable law is the Law of Succession Act and not the Matrimonial Property Act and that therefore the deceased had the capacity to dispose of the property. The matter proceeded to hearing by viva voce evidence.
5. Philip Wambugu is an Advocate of the High Court of Kenya. The deceased approached him on 8<sup>th</sup> November 2021 to write a will. They agreed to meet on 10<sup>th</sup> November 2021. He explained to the deceased the requirements of preparing the will. When they met the deceased explained his wishes, he took notes and went to a cybercafé near the hotel they were meeting to type and print it out.
6. After printing the document, he read it out to the deceased. The deceased then signed it in his presence along with the 2 witnesses; Leah Wanjiru Mutahi and Margaret Karaka (Sister and Sister in law of the deceased). They took photographs at the conclusion of the exercise. On 12<sup>th</sup> November 2021 he registered the will at the register of documents.
7. On cross examination he stated he did not inquire how the property at Umoja was acquired. He did not inquire as to the status of the marriage between the deceased and the respondent. He confirmed that the witnesses were related to the deceased but clarified that they were independent as they were not beneficiaries in the will.
8. Miriam Wanjiru is the respondent. She is also known as Linet Miriam Wanjiru. She and the deceased got married in 1995 and stayed together for 25 years. The union did not have children. She was not present when the will was written. She was called by the advocate to his office after the death of the deceased for the reading of the will. The estate should be distributed in accordance with the will.
9. On cross examination she stated that the name Linet Miriam is on her driving license but she had not presented the same to court. The reference to her as a daughter of the deceased in the affidavit of protest was erroneous. She explained away the variance of the dates as to the marriage in the affidavit of protest and the affidavit in support of the summons for revocation. She first learnt of the will when she was called to the Advocate's office.
10. On the day that the deceased wrote the will a sister in law rang her and told her that she and other family members were with the deceased at Buru Buru. She did not tell her the reason they were meeting. His brother Karaka was also at the meeting. His eldest brother Peter was not at the meeting. She denied that it was Peter who was taking care of the deceased towards the end. She was categorical that although the deceased was unwell he was not critical. At the time he met the deceased, he had separated with his wife. He had children from the earlier union. The other family lived outside the Country. She was aware that the deceased had formalized his marriage. He had told her that he had initiated divorce proceedings against the respondent.



11. She was aware that the estranged wife of the deceased had lived with him in the house at Umoja. She is not in occupation of the house at Umoja she has leased it out to a tenant. She receives a total of Kshs 23000 per month as rental income (Kshs 16000 from the main house and Kshs 7000 from the smaller house).
12. At the time of his death she was at Kiserian and not at the house at Umoja, it is his daughter who rang to inform her of the death. He was being taken care of by a nephew called Ngugi. She confirmed that in the Eulogy prepared by his family she was referred to as a longtime friend and the respondent as the wife.
13. On reexamination she stated that she was married under Kikuyu custom.
14. Samwel Ngare Thuku is an Advocate of the High Court of Kenya. In 2022 he was approached by Philip Wambugu to inform the beneficiaries of the deceased that he had left a will and then read it out to them. He received a call from the respondent asking for the directions to his office, he gave them to her and she came to his office accompanied by her daughter Marion. He also contacted the applicant. After collecting the email addresses of all the beneficiaries, he emailed the will to each one of them. None of the parties acknowledged the email.
15. On 29<sup>th</sup> July 2020 he received a letter from Boniface Njiru Advocate (now deceased) on behalf of the respondent asking for a copy of the will. On cross examination he confirmed that he did not read out the will to the parties, he elected to send it to them via email.
16. Margaret Karaka she is a sister in law to the deceased and she was a witness to the will. She was present at the meeting in Buru Buru. After the will was typed out she confirmed that it captured accurately the expressed wishes of the deceased. She watched him sign the will on all the pages. She signed after him. At the end of the exercise they took a photo. On reexamination, she stated that the Advocate who prepared the will was a nephew to the deceased.
17. She participated in preparing the Eulogy. At the time of his death, they were living separately with the respondent. In the Eulogy they described the applicant as a wife and the respondent as former wife. She did not witness the formalization of the marriage between the deceased and the applicant.
18. She is currently utilizing the parcel of land that belongs to the deceased in Muranga, it neighbours hers. She introduced the applicant to the chief in Muranga. She denied knowledge of the fact that her daughter had applied for the burial permit of the deceased. She denied that the daughter had any ulterior motives in applying for the burial permit.
19. Leah Wanjiru is a sister to the deceased. By 8<sup>th</sup> October 2021 the deceased was very ill, as a family they were concerned. They met to discuss his illness and his will in Buru Buru. She was a witness to the will. They wanted to avoid disputes.
20. On cross examination she confirmed that their elder brother Peter was taking care of the deceased as they were neighbours. Although the deceased was critically ill, he was of sound mind at the time he wrote the will. The applicant was staying with the deceased at the time. She informed the children of the deceased and urged them to come visit him. She would not know why Peter was not called to the meeting at which the deceased prepared the will. In reexamination she reiterated that the will captured the wishes of the deceased.
21. Marion Wangui Jim she is a daughter of the deceased and the respondent. The house at Umoja is their family home. She last visited Kenya in 2010, she and her siblings-maintained telephone contact with the deceased. She visited the deceased in June 2022 on learning that he was critically unwell. She did not know the applicant.



22. Margaret Ngima Karaka she is the respondent and wife to the deceased. She formalized her marriage with the deceased in Church, the land in Umoja was their matrimonial home, as recently as October 2022 she paid the outstanding land rates for the parcel of land.
23. On cross examination, she admitted that she had remarried but that it was a sham wedding to legitimize her stay in Norway. She only became aware of the applicant after she filed the Petition. She confirmed that she had met Thuku Advocate, she was aware of the will at the time she presented the Petition for grant of letters of administration. She contested the will as her husband had not informed her he had another wife. She left the Country in 1995. Although the property is in her husbands name it was matrimonial property and she had contributed to its acquisition and developments.
24. Prior to his death she placed a caveat against the title. The family excluded her from the funeral arrangements. The deceased had numerous girlfriends. She took issue with her exclusion by the deceased.
25. At the close of the hearing each party filed written submissions.

### **Summary Of Applicant's Submissions**

26. The Applicant frames, the following as the issues for determination-
  - a. Whether the will presented by the applicant is valid
  - b. Whether the grant of letters of administration should be revoked
  - c. Whether in the absence of an executor in the will, the applicant and the respondent ought to be appointed as administrators with the will annexed
  - d. Who bears the costs
27. On the first issue; validity of the will, reference is made to the decision in Banks vs Goodfellow (1870) LR 5 QB 549 and Elizabeth Kamene Ndolo v George Matata Ndolo [1996] eKLR on the components of a valid will and the testamentary freedom. It is submitted that the will of the deceased satisfies the legal test and his estate ought to be administered in accordance with the will.
28. On the 2<sup>nd</sup> issue, it is submitted that the Court ought to revoke the grant. The respondent was aware of the Will at the time she presented the petition. She has therefore run afoul of Section 76 of the [Law of Succession Act](#).
29. Reference is made to the decision in re Estate of Christom Kinyua Wainaina [2013] eKLR for the assertion that the Court should appoint administrators as the Will has not appointed executors.
30. It is submitted that the respondent should pay costs.

### **Summary Of The Respondent's Submissions**

31. The issues for determination as framed by the applicant are
  - a. Whether the respondent's is a wife of the deceased
  - b. Whether the purported will dated 10<sup>th</sup> November 2021 is valid
32. It is submitted that the deceased having contracted a monogamous marriage with the respondent had no capacity to enter into a customary law marriage with the applicant. The marriage with the respondent was never dissolved and, in any event, the deceased and the applicant did not register the alleged marriage as required by law.



33. It is further submitted that the impugned will must be annulled on account of the Constitutional safeguards to the family and marriage and rights of parties within a marriage (See Article 45 of [the Constitution](#)). Reference is made to the reasoning of the Court in re Estate of Joseph Masila Mutiso (Deceased) (2017) KEHC 3004 (KLR) on the rights of a spouse to the estate of a deceased spouse.

### **Analysis And Determination**

34. Having considered the pleadings, evidence adduced, submissions filed herein and the relevant law, I deduce the issues for determination to be-
- a. Whether the deceased and the applicant had a valid marriage?
  - b. Whether the will of the deceased is valid?
  - c. If answer to (b) is in the affirmative, whether the estate of the deceased should be distributed in accordance with the will of the deceased?
  - d. Whether the grant issued to the respondent should be revoked?
  - e. Arising from my the above what are the consequential orders
  - f. Who should pay costs
35. Whether the deceased and the applicant had a valid marriage?
36. The respondent challenges the validity of the marriage of the applicant on the basis that her marriage with the deceased which was monogamous and had not been dissolved and that therefore the deceased lacked capacity to enter into any other union.
37. This posture does not align with Section 3(5) of the [Law of Succession Act](#) which provides-
- Notwithstanding the provisions of any other written law, a woman married under a system of law which permits polygamy is, where her husband has contracted a previous or subsequent monogamous marriage to another woman, nevertheless a wife for the purposes of this Act, and in particular sections 29 and 40 thereof, and her children are accordingly children within the meaning of this Act.
38. For purposes of the [Law of Succession Act](#), the marriage of the Applicant to the deceased if established cannot be voided on account of the pre-existing marriage between the respondent and the deceased, see decision in re Estate of RNN (Deceased) [2021] KEHC 6140 (KLR)
39. As to whether the deceased and the applicant were married, in affidavit sworn on 26<sup>th</sup> October 2022, the respondent at paragraph 4 deponed that the persons surviving the deceased were-
- a. Margaret Ngima Karaka- widow/ wife
  - b. Miriam Wanjiru Kabiru – Widow/ wife
  - c. Marion Wangui Jim- Daughter
  - d. Martha Wangui Karaka- Daughter
  - e. Alex Rufus Karaka- Son
40. The respondent has also presented summons for confirmation of Grant dated 8<sup>th</sup> February 2024, in supporting affidavit sworn on the same date and at paragraph 7 she enumerates the dependants/ beneficiaries of the deceased to include the applicant as a wife of the deceased. At the hearing of the case



the respondent sought to deny the marriage. She cannot, as was stated by the Court of Appeal decision in *Gichuhi & 2 others v Kiago & another* [2025] KECA 182 (KLR) approbate and reprobate at the same time. For the foregoing reasons I find that the deceased and the applicant had a valid marriage at the time of his death.

41. Whether the will of the deceased is valid?

42. The respondent challenges the validity of the will on account of the fact that the deceased was critically ill at the time he is alleged to have written the will and that therefore he lacked the mental capacity to execute a will. The circumstances in this case are almost identical to those in *re Estate of Kevin John Ombajo (Deceased)* [2021] KEHC 459 (KLR) where the Court made the following observations-

(29) Section 5 goes on to state that the soundness of mind of the maker of a will shall be presumed unless he is at the time of executing the will, in such a state of mind, whether arising from mental or physical illness, drunkenness, or from any other cause, as not to know what he is doing. The burden of proving lack of capacity on account of lack of a sound mind is cast on the person alleging that the deceased lacked such capacity. Under section 7 of the said Act, wills caused by fraud or coercion or importunity or mistake are stated to be void.

[30] The petitioner alleged that at the time the audio - visual recording was made the deceased was too ill to understand things and was amenable to manipulation and misguidance. On their part, the witnesses present at the time the audio-recording was made asserted that although the deceased had lost his sight, he still possessed clarity of thought. The advocate who led the session painted her interaction with the deceased as fairly personal and from which she deduced that the deceased was of testamentary capacity.

(31) The onus lay with the petitioner to satisfy the court that the deceased at the time of making the audio – visual recording was too ill to know what he was doing. No report by a medical officer or other professional witness on the score was proffered. I have also perused the evidence of the Petitioner and the material placed on record, and I have noted that there is nothing to suggest that the deceased’s condition had deteriorated progressively to a stage where he was mentally incapacitated. It is a fact that the deceased had medical issues over time and sought treatment both locally and abroad.

(32) On record are discharge summaries of the deceased of various dates in 2016. There is however no medical report to indicate that the deceased’s condition affected his mental capacity. In view of the above, it is my conclusion that there is no material before me upon which I can hold that the deceased did not have the requisite testamentary capacity on December 23, 2016 when the audio-visual recording was made.

43. Likewise, in the instant case no medical evidence was tendered in support of the assertion that the deceased lacked the mental capacity to execute a will. Further the applicant’s case was supported by the evidence of the Advocate who drew up the will and the two witnesses to the signature of the testator. These three witnesses who were present when the deceased executed the will were cogent and unshaken in their evidence. I am satisfied that the will was duly executed by the deceased and is valid in accordance with Section 11 of the *Law of Succession Act* that provides-

11. Written wills

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.

44. Having determined that the deceased's will is valid, the next issue for determination is whether the Estate should be distributed in accordance with the will. The respondent challenges the Will on the basis that the deceased purported to distribute property that was not his to distribute. That in particular in relation to the property (Nairobi/Umoja/Block 109/544) the same is matrimonial property and the deceased overstepped when he purported to bequeath her share.
45. The applicant counters the claim by the respondent and submits that her claim is time barred as the land was registered in the name of the deceased at the time of his demise. She submits that the applicable law is the *law of succession Act* and not the *matrimonial property act*.
46. This position adopted by the applicant suggests that the Court is not vested with the mandate to confirm that the property that a deceased purport to bequeath is actually his. Section 5 is categorical that a testator 'may dispose of all or any of his free property by will'. By necessary implication this means he is not at liberty to dispose of property that is not his.
47. It is common ground that the deceased and the respondent established the Umoja property as their matrimonial home. Section 2 of the *Matrimonial Property Act* defines matrimonial home as-
- any property that is owned or leased by one or both spouses and occupied or utilized by the spouses as their family home, and includes any other attached property;
48. This property was acquired well before the commencement of the relationship between the applicant and the deceased. Infact the applicant does not suggest that she contributed to the acquisition or development of the property at Umoja. Having said that I am well aware of the limits of the mandate of the Probate Court which is limited to distributing the free estate of the deceased, this was well articulated in the case of re Estate of Alice Mumbua Mutua (Deceased) [2017] eKLR, in which W. Musyoka J held that:
- The *Law of Succession Act*, and the Rules made thereunder, are designed in such a way that they confer jurisdiction to the probate court with respect to determining the assets of the deceased, the survivors of the deceased and the persons with beneficial interest, and finally distribution of the assets amongst the survivors and the persons beneficially interested. The function of the probate court in the circumstances would be to facilitate collection and preservation of the estate, identification of survivors and beneficiaries, and distribution of the assets.
49. The imperative to recognise and protect the rights of a spouse to the estate of a deceased spouse was affirmed by the Court of Appeal in *Esther Wanjiru Githatu v Mary Wanjiru Githatu* [2019] KECA 811



(KLR). This position by the Court of Appeal is in consonance with the Constitutional edict under Article 10 which provides-

National Values and Principles of Governance

10.

- (1) The national values and principles of governance in this Article bind all State organs, State officers, public officers and all persons whenever any of them—
  - (a) ....;
  - (b) enacts, applies or interprets any law; or
  - (c) ..... (Emphasis Supplied)
- (2) The national values and principles of governance include—

*Constitution of Kenya, 2010*

  - (a) ....;
  - (b) human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalised;
  - (c) .....

50. The Court cannot therefore turn a blind eye of to the rights of a spouse who claims a beneficial interest in an asset that is registered in the name of the deceased. To do so would be tantamount to running rough shod on the rights of that spouse and violate their right to be treated with dignity and guaranteed access to justice. It is not this Court however that has the mandate to decide what the share of the respondent is with respect to the property. Section 7 of the *Matrimonial Property Act* provides-

7. Ownership of matrimonial property

Subject to section 6(3), ownership of matrimonial property vests in the spouses according to the contribution of either spouse towards its acquisition, and shall be divided between the spouses if they divorce or their marriage is otherwise dissolved.

51. The summation of the above is that the property Nairobi/Umoja/Block 109/544 is not the free property of the deceased and therefore he overstepped in purporting to dispose of it in the manner expressed in the will. This Court will now stay further proceedings herein to allow the respondent to move the appropriate forum for determination of her rights. The correct procedure, as guided by the decision in *Esther Wanjiru Githatu v Mary Wanjiru Githatu (Supra)*, appears to be an originating Summons under Order 37 Rule 1 of the Civil Procedure Rules, 2010.

52. The next issue for determination is whether the grant issued to the respondent should be revoked? It now well established that Courts in considering an application for revocation will exercise that discretion judiciously having regard to the best interests of the beneficiaries. See the decision in the case of *Albert Imbuga Kisigwa v Recho Kawai Kisigwa [2016] KEHC 1528 (KLR)*, Mwita J.(as he then was) made pertinent remarks on principles for the revocation of a grant as follows:

- (13) Power to revoke a grant is a discretionary power that must be exercised judiciously and only on sound grounds. It is not discretion to be exercised whimsically or capriciously. There must be evidence of wrong doing for the court to invoke section 76 and order to revoke or annul



a grant. And when a court is called upon to exercise this discretion, it must take into account interests of all beneficiaries entitled to the deceased's estate and ensure that the action taken will be for the interest of justice.

53. The respondent admits that at the time she Petitioned for the grant of letters of administration Intestate, she was aware of the existence of the will. She states that she did not agree with the will. Although in her affidavit in support of the Petition she averred that the applicant was a wife/ widow of the deceased she does not demonstrate that she complied with the mandatory provisions of Section 51 of the Law of Succession Act and Rule 26 of the Probate and Administration Rules.
54. In the circumstances, I have no option but to revoke the grant pursuant to Section 76 of the Law of Succession Act and in accordance with the provisions of Section 66 of the Law of Succession Act direct that a fresh grant issue to the applicant and respondent as joint administrators; namely to Margaret Ngima Kariuki and Miriam Wanjiru Kabiru alias Linet Miriam Wanjiru
55. The applicant admits that she has been collecting rental income from the property at Umoja amounting to Kshs 23000 absent letters of administration. This amounts to intermeddling of the estate contrary to section 45 of the Law of Succession Act. Going forward she will ensure that the rent so collected is deposited into an estate account effective rent falling due on 28<sup>th</sup> February 2026. The rental income collected by her from the date of the deceased until January 2026 will be factored in determining her share to the estate.
56. What then are the consequential orders?
- a. The applicant Miriam Wanjiru Kabiru alias Linet Miriam Wanjiru is deemed to be a wife of the deceased.
  - b. The property Nairobi/ UMOJA/ Block// 109/ 544 is not the free property of the deceased and is therefore not available for distribution in the manner proposed by the deceased in his Will.
  - c. The grant issued to Margaret Ngima Kariuki on 8<sup>th</sup> November 2023 is revoked and a fresh grant will issue to Margaret Ngima Kariuki and Miriam Wanjiru Kabiru alias Linet Miriam Wanjiru
  - d. The administrators will facilitate the opening of an estate bank account and all the rental income (effective rent falling due on 28<sup>th</sup> February 2026) will be deposited into the account.
  - e. Proceedings herein are stayed to allow the respondent to move the appropriate forum for a determination of her entitlement in the property Nairobi/ UMOJA/ Block// 109/ 544.
  - f. The matter will be mentioned on 24<sup>th</sup> July 2026 to confirm progress in the proceedings in (e) above and to take further directions.
57. This being a family matter there shall be no order as to costs.
58. Parties at Liberty to Appeal. Party exercising their right of appeal to do so within 30 days.

It is so ordered.

**SIGNED DATED AND DELIVERED IN VIRTUAL COURT THIS 13<sup>th</sup> DAY OF FEBRUARY 2026.**

**P. M NYAUNDI**

**HIGH COURT JUDGE**

In the presence of:

Fardosa Court Assistant



G. Kamau for Petitioner

Mwangi Ndegwa and Ms. Nguru for Respondent

