



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYANDARUA

CIVIL APPEAL NO. E032 OF 2024

BETWEEN

DAVID KAMAU NJIHIA..... APPELLANT

AND

JULIA WAMBUI NJIHIA.....1ST RESPONDENT

VIRGINIAH WANGUI NDUTA 2ND RESPONDENT

(Being an Appeal from the judgment in the Senior Principal Magistrate’s Succession Cause No. E027 of 2023 at Engineer by Hon. E.N. Wanjala –Principal Magistrate.)

JUDGMENT

1. This case involves the estate of the late Margaret Nduta Njihia. On October 31, 2024, Hon. E.N. Wanjala issued a judgment dismissing the objection filed on March 13, 2024. The appellant was dissatisfied with the decision and appealed, represented by Njihia Njoroge & Company Advocates. The appellant outlined the following grounds for appeal:

- a) The learned trial magistrate erred in law and in fact by failing to find and hold that the respondents were not dependants of the deceased as at her death for the purposes of Section 29 of the Act.
- b) The learned trial magistrate erred in law and in fact by failing to find and hold that the appellant was an adopted son of the deceased, whom the deceased had brought up as her own, thus being her dependant, which failure had she not made would have led to the upholding of the objection.
- c) The learned trial magistrate erred in law and in fact by considering extraneous issues on the basis of which she proceeded to dismiss the appellant's objection, which issues she had not considered would have led to a different finding

- d) The learned trial magistrate erred in law and in fact by failing to find that there was no valid marriage under the Kikuyu Customary Law or any other system of law between the deceased and the 1st respondent, a factor that she had borne in mind would have led to a different judgment in favour of the appellant.
- e) The learned trial magistrate erred in law and in fact by failing to find and hold that the deceased had been married to Aphraham Njihia Kihereko (deceased), who was the biological father of the appellant, which, if she had not done so, would have led to the upholding of the appellant's objection
- f) The learned trial magistrate erred in law and in fact by failing to hold and find that all the requirements of a Gikuyu customary marriage allegedly between the 1st respondents and the deceased were never met and that all her witnesses were related to her and/or had vested interests in the matter which factor had she considered would have led to the upholding of the appellant's objection proceedings
- g) The learned trial magistrate erred in law and in fact by failing to find and hold that there was no evidence of a long cohabitation, having children together or joint properties between the deceased and the 1st respondent to warrant the application of the doctrine of presumption of marriage matters which had she properly addressed herself to would have led to the upholding of the appellant's objection.
- h) The learned trial magistrate erred in law and in fact by failing to find and hold that the relationship between the deceased and the 1st respondent did not meet the threshold of a marriage either by custom or presumption, which finding would otherwise have led to the validation of the appellant's objection proceedings.
- i) The learned trial magistrate erred in law and in fact by failing to find and hold that the appellant had proved to have been a stepchild of the deceased and thus a dependant for the purposes of the Act.
- j) The learned trial magistrate erred in law and in fact by believing the evidence of DW3, who claimed that according to Kikuyu customary law, once dowry was paid for a wife, the wife could not remarry if her husband died, evidence which, if she had not believed, would have led to the upholding of the appellant's objection.
- k) The learned trial magistrate erred in law and in fact by failing to find and hold that there cannot be a valid marriage between two women, a factor which, had she taken it into account, would have led to the success of the appellant's objection proceedings.

- l) The learned trial magistrate erred in law and in fact by condemning the appellant to bear the costs of the proceedings.
 2. Gatundu & Company Advocates represented the respondents. The appeal was opposed on the following grounds:
 - a) The appellant was not a dependant of the deceased.
 - b) The respondents established that they were dependants of the deceased.
 3. This Court is the first appellate court. I am aware of my duty to evaluate the entire evidence on record, bearing in mind that I had no advantage in seeing the witnesses testify and observing their demeanour. I will be guided by the pronouncements in the case of **Selle vs Associated Motor Boat Co. Ltd. [1965] E.A. 123**, where it was held that the first appellate court has to reconsider and evaluate the evidence that was tendered before the trial court, assess it and make its conclusions in the matter.
 4. The starting point in a succession cause is an introduction letter by the area chief. Courts have accepted this as good practice, though not legally required, as it provides a preliminary indication of the identity of the heirs and, to some extent, of the likely assets of the deceased. For instance, in **re Estate of Ambutu Mbogori (Deceased) [2018] eKLR**, Gikonyo J. stated:

The Petitioner committed other sins; he initiated these proceedings without a letter of introduction from the chief. This letter serves an important purpose in the ascertainment of deceased, dependants as well as properties of the deceased.
 5. I agree with this proposition, but I would add that it is rebuttable. Nevertheless, it plays a crucial role in resolving disputes like the one currently before the court.
 6. In this case, the chief's letter dated March 29, 2023, did not identify the appellant as the deceased's dependent. The appellant must prove that the omission was an error. However, in his testimony, he admitted that he was not the biological son of the deceased, despite claiming in his filed objection to be the only son.
 7. The objector conceded that the deceased, whose estate is in issue, was barren. He also conceded that he used to see the 1st petitioner in the home of the deceased herein. He changed his version during cross-examination and stated that his mother gave him out to Margaret Nduta Njihia. He does not state the circumstances under which he was given out. This reminds me of the song by Johnston Mukabi – "Mtoto Si Nguo Utaomba Mtu." Even under African customary law, adoption was an elaborate ceremony that left no room for guesswork.
 8. The appellant, therefore, failed to discharge his onus that he was adopted by the deceased, Margaret Nduta Njihia.
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9. It would appear that the appellant was out on a fishing expedition. He claimed that his father was Peter Njihia Kamau. During cross-examination, he said that Peter Njihia Kamau was also known as Abraham Njihia Kihereko. This contradicts his written statement, which states:

I am a son of the said Njihia Kihereko Aphraham, alias Njihia Kihereko, by another woman.

10. He did not state in his statement that Njihia Kihereko Aphraham, also known as Njihia Kihereko, was furthermore identified as Peter Njihia Kamau. When he attempted to introduce this clarification during cross-examination, the learned trial magistrate detected the deception he was attempting.

11. The analysis of the evidence on record shows that the objection lacked merit. It warranted dismissal with costs. This appeal is equally without merit and is therefore dismissed with costs.

Delivered and signed at Nyandarua, this 5th day of March 2026

**KIARIE WAWERU KIARIE
JUDGE**