



REPUBLIC OF KENYA



**Mutai v Koech & another (Civil Appeal E014 of 2024)
[2026] KEHC 2453 (KLR) (26 February 2026) (Judgment)**

Neutral citation: [2026] KEHC 2453 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
CIVIL APPEAL E014 OF 2024
JK SERGON, J
FEBRUARY 26, 2026**

BETWEEN

PRISCILLAR CHEPKEMOI MUTAI APPELLANT

AND

ALEX KIPNGENO A. KOECH 1ST RESPONDENT

NICKEY KIPTOO RONO 2ND RESPONDENT

(Being an appeal from the Judgment of Hon. J. M. Munguti (SPM) delivered on 28th March 2024 in Kericho Chief Magistrates Court Succession Cause No. 51 of 2012)

JUDGMENT

1. This is an appeal arising from the decision of the Senior Principal Magistrate's Court at Kericho (Hon. J. M. Munguti) delivered on 28th March 2024. In the impugned judgment, the learned trial magistrate revoked the grant of letters of administration intestate that had been issued to the Appellant, Priscillar Chepkemoi Mutai, and confirmed on 25th February 2011, in respect of the estate of the late Samwel Kiprono Mutai ("the deceased").
2. The revocation was premised on the finding that the Appellant had concealed from the court the existence of a first wife, one Janet Chepkorir, and her children, including the 2nd Respondent, Nickey Kiptoo Ronoh. The trial magistrate held that Janet Chepkorir was married to the deceased under Kipsigis customary law, that this marriage subsisted at the time of the deceased's death, and that her children were entitled to a share of the estate.
3. Being aggrieved by the said decision, the Appellant lodged the present appeal vide a Memorandum of Appeal dated 9th April 2024. The appeal raises eleven grounds, which essentially challenge the trial magistrate's findings on the existence of the alleged customary marriage, the paternity of the alleged



children, the weight accorded to the Appellant's civil marriage certificate, and the reliance on the evidence of interested witnesses.

4. The appeal was canvassed by way of written submissions, which were duly filed by both parties. I have carefully considered the record of appeal, the proceedings, the judgment of the lower court, and the respective submissions of counsel.
6. I am acutely mindful of the duty of this court as a first appellate court. The principles are well settled. In *Selle & Another v Associated Motor Boat Co. Ltd & Others* [1968] EA 123, the Court of Appeal for East Africa held that an appeal from a trial court is by way of retrial and this court must reconsider the evidence, evaluate it itself, and draw its own conclusions, bearing in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect.
7. This position was reiterated in *Abok James Odera t/a A. J. Odera & Associates v John Patrick Machira t/a Machira & Co. Advocates* [2013] eKLR, where the Court of Appeal stated:

“This being a first appeal, we are reminded of our primary role as a first appellate court namely, to re-evaluate, re-assess, and re-analyse the extracts on the record and then determine whether the conclusions reached by the learned trial Judge are to stand or not and give reasons either way.”
8. However, as held in *Ephantus Mwangi & Another v Duncan Mwangi Wambugu* [1982-88] 1 KAR 278 and cited with approval in *Mwanasokoni v Kenya Bus Services Ltd* [1985] KLR 931, this court will not normally interfere with a finding of fact by the trial court unless it is based on no evidence, or on a misapprehension of the evidence, or the trial court is shown demonstrably to have acted on wrong principles in reaching the findings it did.
9. I must therefore approach this appeal with caution, giving due deference to the trial magistrate who had the advantage of observing the witnesses, while at the same time discharging my duty to re-evaluate the evidence and correct any errors of law or fact.
10. To properly contextualize the appeal, it is necessary to set out a detailed account of the procedural history and the evidence adduced before the lower court.
11. The deceased, Samwel Kiprono Mutai, died in July 1999. On 12th June 2008, the Appellant petitioned the High Court at Nakuru for letters of administration intestate in respect of his estate. In her petition, she described herself as the widow of the deceased and listed the survivors as herself and her three children. She attached a Chief's letter from the Assistant Chief of Korongoi Sub-Location, which confirmed her as the widow and identified the beneficiaries.
12. A grant of letters of administration was issued to the Appellant on 28th April 2009. Thereafter, on 25th February 2011, the grant was confirmed by the High Court (Ouko, J. as he then was), and the estate was distributed as per the confirmed grant.
13. The first challenge to the grant came on 8th September 2011, when the deceased's mother, one Woindah Chepkoech Marusoi (now deceased), filed a summons for revocation of the grant. In her supporting affidavit sworn on the same day, she deposed that the petition had been filed without her knowledge or involvement, yet she was a mother of the deceased and a dependent.
14. Crucially, at paragraph 10 of her Supporting affidavit, the deceased's mother stated:

“That the petitioner is the only widow of the deceased.”



15. She made no mention whatsoever of a first wife named Janet Chepkorir. She made no mention of any children from a first house. Her only complaint, as captured in paragraph 12 of her affidavit, was that a piece of land she alleged was gifted to her by the deceased had not been included in the distribution. If Janet Chepkorir and her children existed and were living in the same homestead, this court must ask, would a grandmother omit her own daughter-in-law and grandchildren from an objection to her son's succession? The answer must be in the negative.
16. The proceedings stalled for some time, and unfortunately, the deceased's mother passed away. Thereafter, an application dated 12th September 2018 was filed seeking to substitute the original objector and to introduce the 2nd Respondent, Nickey Kiptoo Ronoh, as an additional objector. It was in this application that the allegation of a first wife and her children first emerged.
17. According to the application, the 2nd Respondent claimed to be the first-born son of the deceased from a first wife, Janet Chepkorir. He alleged that the first house had been completely omitted from the succession proceedings and that they were entitled to a share of the estate.
18. The Appellant filed a replying affidavit opposing the application. She denied any knowledge of Janet Chepkorir or the 2nd Respondent. She maintained that she was the only wife of the deceased, having married him in a civil ceremony on 15th September 1995, and that they were blessed with three children.
19. Directions were taken, and the matter proceeded to hearing. The Objectors called four witnesses, while the Petitioner called two witnesses, including herself.
20. PW1 - Joseph K. Kimeto, testified that he was a neighbor of the deceased and that the deceased had two wives, Janet (the first wife) and Priscillar (the second wife). He stated that Janet had three children, including Nickey Kiptoo. Under cross-examination, he admitted that he did not attend any marriage ceremony for Janet and that he only "heard about" the marriage. He also admitted that Janet did not attend the deceased's burial but came after.
21. PW2 - Richard Langat, testified that he was a brother of the deceased. He confirmed that the deceased had two wives, Janet and Priscillar. He stated that Janet had five children who were not captured in the succession case. He alleged that Janet has a mental illness that emerged after Priscillar came. Under cross-examination, he made several significant admissions; He admitted that the minutes of the family meeting held on 14th August 1999 only recognized Priscillar as the wife. He admitted that he had no documents to prove Janet's alleged mental illness. He admitted that the Appellant did not know about Janet until she was brought from Nakuru.
22. PW3 - Nickey Kiptoo Ronoh (2nd Objector): He testified that he was the first-born son of the deceased and Janet Chepkorir. He stated that he had three sisters; Purity, Sharon, and Mercy. He produced a birth certificate showing the deceased as his father. He testified that the Appellant used to visit them and that he did not understand why they were left out of the estate. Under cross-examination, he admitted; He had no documents to prove his mother's alleged mental illness. He attended the deceased's burial in 1999. He was born in 1992 (officially 1984) and was circumcised in 2004/2005 by his uncle, Alex. He was not aware of any family meeting held to discuss the deceased's estate.
23. PW4 - Sharon Cheptoo: She testified that she was a daughter of the deceased and Janet Chepkorir. She stated that she was objecting to the grant because she had been left out. Under cross-examination, she admitted that she dropped out of school due to poverty and was unaware of her father's wealth until recently.
24. Priscillar Chepkemoi Mutai (Appellant): She testified that she married the deceased on 15th September 1995 at the Registrar's Office in Nakuru. She produced her marriage certificate as Exhibit 1. She stated



that she was the only wife of the deceased and that they were blessed with three children: Calvin Cheptoo, Yucabeth Mutai, and Emmanuel Rono. She testified that after the deceased's death, her in-laws raided her home and confiscated properties, including vehicles and title deeds. She stated that a family meeting was held on 14th August 1999, where the family discussed the deceased's properties and resolved to return the confiscated items. She produced the minutes of that meeting. She denied any knowledge of Janet Chepkorir or Nickey Kiptoo. Under cross-examination, she admitted that one of her children, Emmanuel Kiptoo, was born in 2004, five years after the deceased's death, but maintained that the child was still a child of the deceased.

25. Petitioner's Witness 2 - Ezekiel Koech: He testified that he was a brother of the deceased. He confirmed that the Appellant was the wife of the deceased and that the deceased had only one wife. He testified that after the deceased's death, his brothers, including Alex (the 1st Respondent), raided the Appellant's home and took away properties. He stated that the family meeting of 14th August 1999 resolved that all properties be returned to the Appellant. He testified that the alleged first wife, Janet Chepkorir, is actually the third wife of his brother, Alex Koech (the 1st Respondent). He stated that Nickey Kiptoo was brought by Alex when he was about 10-12 years old and was circumcised at Alex's home. Under cross-examination, he admitted that Janet and her children currently live in the deceased's house at the family home, but he maintained that they are not the deceased's family. He also admitted that he has never filed any official complaint about their occupation.
26. In his judgment delivered on 28th March 2024, the learned trial magistrate made the following key findings;
- a) That Janet Chepkorir was the first wife of the deceased, married under Kipsigis customary law.
 - b) That the 2nd Respondent and his siblings were children of the deceased.
 - c) That the Appellant's civil marriage did not dislodge the first customary marriage.
 - d) That the Appellant's failure to include the first house in the succession proceedings amounted to concealment of material facts.
 - e) That the grant confirmed on 25th February 2011 should be revoked.
27. In reaching these findings, the trial magistrate relied heavily on the testimony of PW1, PW2, and PW3, and on the fact that Janet Chepkorir resides in the deceased's house at the family home. He also made certain observations that this court must scrutinize carefully. At page 120 of the Record of Appeal, the Magistrate stated:
- “What I understand is that the marriage between the deceased and 1st wife had somehow broken down probably as a result of the alleged sickness of the 1st wife. She had literally been abandoned by the deceased and the family had somehow forgotten about her...”
28. This court must ask, on what evidentiary basis did the trial Magistrate make these findings? No witness testified that the marriage had broken down. No witness testified that the deceased had abandoned Janet. These were extraneous matters introduced by the court itself.
29. The Appellant's Memorandum of Appeal raises eleven grounds. In their written submissions, counsel for the Appellant, M/s Akinyi & Co. Advocates, condensed these grounds into the following core arguments: The trial Magistrate erred in finding that Janet Chepkorir was the first wife without any proof of a customary marriage and without producing her in court. The Magistrate erred in finding that the 2nd Respondent and his siblings were children of the deceased without any proof of paternity, such as DNA evidence. The Magistrate failed to accord due weight to the Appellant's civil marriage



certificate and the minutes of the family meeting of 14th August 1999. The Magistrate's decision was based on conjecture and the evidence of conflicted witnesses. The introduction of the 2nd Respondent into the proceedings after the death of the original objector was an afterthought.

30. Counsel for the Respondents, M/s Gacathi & Co. Advocates, countered that the trial magistrate properly evaluated the evidence. They relied on the testimony of PW1 and PW2, the fact that Janet resides in the deceased's house, and the cultural significance of the 2nd Respondent's circumcision under the care of his uncles. They submitted that the grant was properly revoked under Section 76 of the [Law of Succession Act](#) for concealment of material facts.
31. From the grounds of appeal and the submissions, the following issues fall for determination:
- a) Whether the Respondents proved, on a balance of probabilities, the existence of a customary marriage between the deceased and Janet Chepkorir.
 - b) Whether the Respondents proved that the 2nd Respondent and his siblings are children of the deceased.
 - c) What is the legal effect of the Appellant's civil marriage certificate vis-à-vis the alleged customary marriage?
 - d) What weight should be accorded to the minutes of the family meeting of 14th August 1999?
 - e) Whether the trial magistrate erred in his evaluation of the evidence and in his application of the law.
 - f) Whether the revocation of the grant under Section 76 of the [Law of Succession Act](#) was justified.
32. Before delving into the merits, it is essential to restate the applicable burden and standard of proof. Section 107(1) of the [Evidence Act](#) (Cap 80) provides that 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. The Respondents bore the burden of proving, on a balance of probabilities, that Janet Chepkorir was married to the deceased and that the 2nd Respondent and his siblings are children of the deceased.
33. In [Karugi & Another v Kabiya & 3 Others](#) [1987] KLR 347, the Court of Appeal held that the burden of proof on a plaintiff in a civil case is not discharged by raising doubts about the defendant's case. The plaintiff must prove his own case on a balance of probabilities. This principle applies with equal force to the Respondents in this appeal.
34. The law on proof of customary marriage is well settled. In [Hortensiah Wanjiku Yawe v The Public Trustee](#) [1976] KLR 64, the Court of Appeal held that for a customary law marriage to be proved, there must be evidence of the specific customs of the community, including the payment of dowry and the celebration of the marriage according to those customs. The court stated;
- “The burden of proving a customary law marriage is on the person who alleges it. Such proof must go beyond mere assertions and must include evidence of the rites and rituals performed, the payment of dowry, and the participation of the families of both parties.”
35. This position was affirmed in [Virginia Edith Wambui Otieno v Joash Ochieng Ougo & Another](#) [1987] eKLR (The SM Otieno case), where the Court of Appeal emphasized that customary law is a matter of evidence to be proved by those who allege its existence.



36. Applying these principles to the present case, I have carefully examined the evidence tendered by the Respondents. PW1, Joseph Kimeto, was a neighbor who testified that he "heard about" the marriage. He did not attend any ceremony. He could not testify to the payment of dowry or the performance of any Kipsigis customs. His evidence was, at best, hearsay.
37. PW2, Richard Langat, was a brother of the deceased. He testified that Janet was married under Kipsigis customary law. However, under cross-examination, he could not provide any details of the marriage. He did not know when the dowry was paid, who received it, or who the elders were. He admitted that the deceased did not inform the family about his marriage to the Appellant, which raises questions about the family's involvement in the deceased's marital affairs generally.
38. *In Re Estate of M'Marete M'Muchui (Deceased)* [2017] eKLR, the court held that hearsay evidence that someone was "married" is insufficient to prove a customary marriage. There must be evidence of the rites and rituals performed, the payment of dowry, and the participation of the families of both parties. The testimony of PW1 and PW2 falls far short of this standard.
39. Furthermore, the conduct of the deceased's own mother, the original objector, is highly significant. In her affidavit sworn on 8th September 2011, she stated in clear and unambiguous terms that the Appellant was the "only widow." She made no mention of Janet Chepkorir or any children from a first house.
40. This court must pose the question, If Janet Chepkorir was indeed the first wife, living in the same homestead with her children, would the deceased's mother have omitted them from her objection? The answer is obvious. A grandmother does not forget her own grandchildren. A mother-in-law does not forget her daughter-in-law who lives in the same compound. The only logical inference is that Janet Chepkorir and her children were not recognized as part of the deceased's family at the time the original objection was filed.
41. In *Ruth Wambui Kanyoro v Njoroge Ndirangu & Another* [2016] eKLR, the court held that the non-inclusion of alleged beneficiaries by a close family member in initial pleadings is a strong indicator that such persons were not considered part of the family at the time. I adopt that reasoning here.
42. The introduction of the 2nd Respondent into these proceedings after the death of the objector raises serious questions about the genuineness of the claim. Why were these alleged beneficiaries not mentioned earlier? Why did they wait until after the objector's death to come forward? These questions remain unanswered.
43. The Appellant placed significant and, in my view, justified reliance on the minutes of the family meeting held on 14th August 1999. This document, which is part of the record at page 23, is a contemporaneous record made shortly after the deceased's death. It is signed by 18 individuals, including close family members and villagers.
44. A careful examination of these minutes reveals the following;The meeting was attended by the deceased's brothers, including Richard Langat (PW2) and Alex Koech (the 1st Respondent).The purpose of the meeting was to discuss the deceased's properties and the way forward.Throughout the minutes, the Appellant is referred to as the widow. There is not a single mention of Janet Chepkorir or any children from a first house.The minutes record resolutions on how various properties were to be handled, including the return of confiscated items to the Appellant.
45. If Janet Chepkorir existed as the first wife, occupying the deceased's house at the family home, this court must ask; Would she not have been a participant in this meeting? Would her children not have



been mentioned when discussing the deceased's assets? Would 18 family members and villagers simply forget her existence? The answer to each of these questions is no.

46. In *Joseph Kanyi Kanyarati v Onesmus Kinyua Kanyarati* [2019] eKLR, the Court of Appeal held that contemporaneous documents are of great evidentiary value and should be given due weight, especially when they contradict oral testimony given years later by interested parties. The court stated;

“Documents prepared at the time when events were fresh in the minds of the parties are more reliable than oral testimony given years later, particularly when the witnesses have an interest in the outcome of the case.”

47. I find that the trial magistrate erred by failing to give proper weight to this crucial piece of documentary evidence. The minutes of 14th August 1999 strongly support the Appellant's case that she was recognized as the only widow of the deceased by the family and the community.

48. The 2nd Respondent, Nickey Kiptoo Ronoh, testified and produced a birth certificate to prove he is a son of the deceased. However, this document was obtained in 2013, some 14 years after the deceased's death.

49. In *Re Estate of JNM (Deceased)* [2016] eKLR, the court held that a birth certificate is prima facie evidence of the facts contained therein, but it is not conclusive. Where paternity is contested, the court may require additional evidence, especially where the certificate was obtained after the death of the alleged father. The court stated;

“A birth certificate obtained long after the death of the alleged father, in the absence of corroborating evidence, is of limited probative value. The court must be alive to the possibility of fraud or mistake.”

50. In the present case, there is no corroborating evidence. The other alleged siblings, Purity Cherotich, Sharon Cherotich, and Mercy were not produced in court. No documents were exhibited on their behalf. No independent witness testified to their paternity. The court was asked to make them beneficiaries based solely on the word of the 2nd Respondent.

51. This court must ask, can a court declare individuals beneficiaries of an estate without any direct evidence of their existence or paternity? The answer is no. To do so would be to set a dangerous precedent where anyone could come forward and claim to be a child of a deceased person without proof.

52. The Respondents offered to submit to a DNA test. However, In *Re Estate of GKK (Deceased)* [2017] eKLR, the court held that the burden of proof lies with the party alleging paternity. An offer to submit to a DNA test does not, by itself, prove paternity. The party must first establish a prima facie case before the court can order DNA testing. The Respondents failed to establish a prima facie case. Their evidence was uncorroborated and largely hearsay.

53. Moreover, the 2nd Respondent's own testimony raises credibility issues. He stated that he was born in 1992 but later said his official records show 1984. He stated that he attended the deceased's burial in 1999 but was circumcised in 2004/2005 by his uncle Alex. While these inconsistencies may not be fatal on their own, they do not inspire confidence in the reliability of his evidence.

55. The Respondents raised the issue of the Appellant's child, Emmanuel Kiptoo, who was born in 2004, five years after the deceased's death. They used this to attack the Appellant's credibility and to suggest that she is not a reliable witness.



56. I must address this point squarely. The Appellant's claim regarding her posthumous child is indeed problematic. Under Section 29 of the Law of Succession Act, a child born after the death of a father may still be considered a dependant, but the fact of paternity must be established. The Appellant's insistence that this child is a child of the deceased, without any evidence, raises questions about her understanding of the law and her credibility.
57. However, as held in *Karugi & Another v Kabiya & 3 Others* [1987] KLR 347, the burden of proof on a plaintiff is not discharged by raising doubts about the defendant's case. The Respondents must prove their own case. The Appellant's credibility issues do not relieve the Respondents of their burden to prove that Janet Chepkorir was married to the deceased and that the 2nd Respondent is his son.
58. Furthermore, the two issues are separate. Even if this court were to find that the Appellant's claim regarding Emmanuel Kiptoo is unsustainable, that finding would not automatically prove the Respondents' case. The Respondents must still adduce sufficient evidence to prove their own claims.
59. The Respondents placed great emphasis on the fact that Janet Chepkorir resides in the deceased's house at the family home in Cheptingting. The trial magistrate also relied on this fact in reaching his decision.
60. I have considered this point carefully. It is true that Janet Chepkorir occupies the house that belonged to the deceased. However, the Appellant's own witness, Ezekiel Koech, explained this occupancy. He testified that under Kipsigis custom, when a son leaves his father's homestead, he leaves his house behind to be occupied by anyone. He stated that the Appellant moved to her own home in Cheborge and that the house at Cheptingting was left behind. He further testified that his brother, Alex (the 1st Respondent), brought Janet and her children to occupy that house.
61. This court must ask, does occupation of a house, without more, prove a marriage? The answer is no. Occupation of property can be explained in many ways. It could be a licence, a tenancy, or, as alleged here, an arrangement by a brother to house a woman he claims is his own wife. Occupation, by itself, is not proof of a marital relationship.
62. Moreover, the Appellant testified that she did not complain about the occupation because the house is on her father-in-law's land, and she had no authority to remove anyone from that land. This explanation is reasonable and plausible.
63. I must also address the quality of the witnesses called by the Respondents. PW2, Richard Langat, and the 1st Respondent, Alex Koech, are brothers of the deceased. They are also the very individuals who, according to the Appellant's evidence, confiscated her property immediately after the deceased's death. They have a direct and substantial interest in the outcome of this case.
64. In *Re Estate of M'Marete M'Muchui (Deceased)* [2017] eKLR, the court held that the evidence of interested parties must be scrutinized with great care and should not be accepted without independent corroboration. The court stated;
- “Where a witness has a personal interest in the outcome of the case, the court must approach their evidence with caution. Such evidence should be corroborated by independent evidence before it can be acted upon.”
65. In this case, the evidence of PW1, PW2, and PW3 was not corroborated by any independent witness. No village elder was called. No religious leader was called. No neutral family friend was called. The court was asked to rely solely on the word of individuals who stand to benefit from a revocation of the grant.



66. I find that the trial magistrate erred by accepting this evidence without requiring independent corroboration.
67. The Appellant produced a marriage certificate issued under the now-repealed *Marriage Act*, Cap 150. This certificate is prima facie evidence of a valid marriage. The Respondents did not challenge the validity of this certificate.
68. While Kenya is a jurisdiction that recognizes polygamy, the existence of a subsequent civil marriage does not automatically invalidate a prior customary marriage. However, the prior marriage must first be proved to exist. As I have found above, the Respondents failed to prove the existence of a customary marriage between the deceased and Janet Chepkorir.
69. In the absence of proof of a prior marriage, the Appellant's civil marriage certificate stands as conclusive evidence that she was the lawful wife of the deceased at the time of his death.
70. I am constrained to observe that the trial magistrate's judgment contained elements of speculation that were not supported by the evidence. At page 120 of the Record of Appeal, the magistrate stated;
- “What I understand is that the marriage between the deceased and 1st wife had somehow broken down probably as a result of the alleged sickness of the 1st wife. She had literally been abandoned by the deceased and the family had somehow forgotten about her...”
71. No witness testified that the marriage had broken down. No witness testified that the deceased had abandoned Janet. The magistrate's statement that the family had "forgotten" about her is pure speculation. These were extraneous matters introduced by the court itself.
72. In *Mary Wanjiru Gachite v James Thiong'o Gachite & Another* [2017] eKLR, the Court of Appeal held that a court's decision must be based on evidence, not speculation. Where a court introduces its own theories not supported by the evidence, it commits an error of law. The court stated;
- “A judge or magistrate must decide cases on the evidence presented by the parties, not on their own theories or conjectures. To do otherwise is to descend into the arena and risk injustice.”
73. I find that the trial magistrate's speculation about the breakdown of the marriage and abandonment constituted an error of law that vitiates his findings.
74. Section 76 of the *Law of Succession Act* provides for revocation of a grant on several grounds, including where 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.
75. In *Albert Imbuga Kisigwa v Recho Kawai Kisigwa* [2016] eKLR, the court held that the power to revoke a grant is a discretionary power that must be exercised judiciously and only on sound grounds. There must be evidence of wrongdoing for the court to invoke Section 76. The court stated;
- “The power to revoke a grant is not a light matter. It should only be exercised where there is clear and convincing evidence that the grant was obtained through fraud, concealment, or some other impropriety. The court must be vigilant to protect the sanctity of lawful grants.”
76. The Respondents alleged concealment. But concealment presupposes the existence of a fact to be concealed. The Respondents were required to prove, as a fact, that Janet Chepkorir was a wife and that the 2nd Respondent and his siblings were children of the deceased.
77. For the reasons stated above, I find that they failed to do so.



The alleged "facts" were not proved. Consequently, there was no concealment, and the trial magistrate had no basis to revoke the grant.

78. Having re-evaluated the evidence in its entirety and having considered the applicable law, I arrive at the following conclusions;

The Respondents failed to discharge the burden of proving, on a balance of probabilities, that Janet Chepkorir was married to the deceased under Kipsigis customary law.

The Respondents failed to prove that the 2nd Respondent and his siblings are children of the deceased. The minutes of the family meeting of 14th August 1999, a contemporaneous document signed by 18 individuals, strongly support the Appellant's case that she was recognized as the only widow. The conduct of the deceased's mother, the original objector, in omitting any mention of Janet Chepkorir and her children, is a powerful indicator that they were not considered part of the family at the time. The evidence of the Respondents' witnesses, being interested parties, lacked independent corroboration and should have been approached with caution. The trial magistrate erred by introducing speculation and extraneous matters not supported by the evidence. The Appellant's civil marriage certificate, being unchallenged, stands as proof of her status as the lawful widow. The revocation of the grant under Section 76 of the Law of Succession Act was not justified.

79. The Court of Appeal in *Re Estate of M'Marete M'Muchui (Deceased)* (*supra*) stated *inter alia*.

"The court must be vigilant to protect the sanctity of lawful grants and not to disturb them on the basis of unsubstantiated claims made years after the fact, especially when those claims are brought by persons who stand to benefit from the revocation."

80. The Appellant obtained a grant lawfully, based on her civil marriage, and had it confirmed after following due process. She has been administering the estate for many years. To revoke the grant on the basis of unproven allegations would be unjust and would set a dangerous precedent.

81. Accordingly, the Appeal is allowed giving rise to issuance of the Orders:-

- (a) Judgment of the Honourable Senior Principal Magistrate J. M. Munguti delivered on 28th March 2024 in Kericho CM Succession Cause No. 51 of 2012 is hereby set aside.
- (b) The grant of letters of administration issued to the Appellant, Priscillar Chepkemai Mutai, and confirmed on 25th February 2011, is hereby reinstated.
- (c) The Appellant shall have the costs of this appeal to be settled by the Respondents.

DATED, SIGNED AND DELIVERED AT KERICHO THIS 26TH DAY OF FEBRUARY, 2026.

.....
J. K. SERGON

JUDGE

In the presence of:-

C/Assistant – Rutoh

