

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MOMBASA**  
**SUCCESSION CAUSE NOS.E056 &E057 OF 2024**  
**IN THE MATTER OF THE ESTATE OF LUCIA NJENGA**  
**KARANJA(DECEASED)**

**AND**

**IN THE MATTER OF THE ESTATE OF PETER KARINDE NJENGA**  
**(DECEASED)**

**JUDGEMENT**

1. Before this court is a summons for the revocation of the grant issued on **30<sup>th</sup> September 2024** issued in respect of the estate of **Lucia Njenga Karanja** (hereafter "Lucia") to **Sharon Adhiambo Oduor** (hereafter "**Sharon**"), on the grounds that the proceedings violate the *res sub judice* rules; the said administrator obtained the grant fraudulently through false statements and the concealment of material facts, including but not limited to the existence of succession proceedings in Kwale, to wit, **Kwale Succession Cause No. E059 of 2023**, relating to the estate of **Lucia Njenga Karanja**; and for making untrue allegations of facts essential in law to qualify for the issuance of the grant, including but not limited to misleading the court into believing she is the daughter-in-law of the deceased; that the deceased had a son known as **Peter Karinde Njenga** who had allegedly married her and later died on **10th July 2022** before the death of **Lucia Njenga Karanja** (deceased); that the late **Lucia Njenga Karanja** had no other relatives entitled to take out letters of administration over her estate; and that the administrator has no financial means to

support the children allegedly sired by **Peter Karinde Njenga**, who is allegedly a son of the deceased.

2. The application is based on the affidavit of Margaret Gaciku Karanja, sworn on 22nd October 2024. Ms. Karanja stated in her deposition that the deceased herein died on 12th August 2023. On 22nd November 2023, she applied for a grant of letters of administration intestate in the Kwale Magistrates Court, MSUCC NO. E059 OF 2023; In the Matter of the Estate of Lucia Njenga Karanja (Deceased), in her capacity as the sister of the deceased. The grant was issued on 25th March 2024.
3. She stated that the deceased herein had no children and left no estate capable of being inherited. She further stated that the properties listed as belonging to her were part of the family's properties and were registered in the names of the deceased and herself, and therefore are not available for inheritance by the alleged beneficiaries. She contended that the petitioner misled the court into issuing a grant of letters of administration ad colligenda bona to access funds in the deceased's bank accounts, in total violation of her rights to inherit from her sister. Further, the petitioner concealed material facts regarding her financial status to unlawfully and irregularly obtain the said grant.
4. She averred that the deceased's estate is at great risk of being entirely wasted by the petitioner if the grant issued on 30th September 2024 is not revoked. Ms Karanja stated that the proceedings herein have been filed irregularly and in total violation of the law prohibiting the duplicity of suits.

5. **Jackline Koli Mwitikili** also filed a summons for revocation, dated **4th February 2025**, seeking revocation of the grant issued to Sharon on the grounds that she was not legally married to **Peter Karinde Njenga** and that the grant was obtained fraudulently through false statements, concealment of material facts, and by misleading the court into believing she had three children with the late Peter. She argued that she is the person Peter introduced as his wife and that she was blessed with one child, **Purity Wairimu Karinde**.
6. Sharon filed a reply affidavit, sworn on 7th March, 2025, in which she described the application as frivolous, embarrassing, and an abuse of the court process. She stated that Purity has her father, **John Mwacharo Mwadime**, who assumed full responsibility for her, and for that reason, she is not a beneficiary.
7. Sharon also filed a further affidavit, sworn on 28th October 2024, in which she reiterated her position. She stated that the first objector is an administrator, not a beneficiary, and that a violation of the *res sub judice* rule is not a ground for revocation. Sharon reiterated that she was married to the late Peter through customary marriage. She contended that the succession petition in Kwale was filed in secrecy, to the exclusion of her children and herself. The valuation of properties in the Kwale proceedings is misleading and false.
8. Margaret also filed a further affidavit, sworn on 21st November 2024, and reiterated her position in her supporting affidavit. She stated that the petitioner had not tendered any evidence showing that she was lawfully married to Peter.

9. Given the contested nature of the matter, the Court directed that the two summonses for the revocation of the grants issued to Sharon be canvassed by way of viva voce evidence. To safeguard the integrity of the trial, the Court directed that the hearing be held in open court. I will summarize the parties' evidence below.
10. OW1 Margaret Gaciku Karanja adopted her witness statement dated 4th February 2025 as her testimony in chief and produced the documents in her list and bundle of documents as her exhibits, in the order in which they appeared.
11. When cross-examined by Mr. Magiya, learned counsel for Sharon, she testified that Lucia was her younger sister. She also testified that she is blessed with six children, Mary Njoki, Peter Karanja, Eliud Kiarie, June Njambi, Alice Nyambura, and Elizabeth Njeri, and that all of them are married.
12. She testified that Lucia was married to one **Francis Njenga Gichungi**, but had no children. The deceased adopted a 2-year-old boy named **Peter Karinde Njenga**, whom she educated and raised. She lived with him in her home in Ukunda. She further testified that Lucia was appointed as an administrator of the estate of Gichungi, and that Peter was named as a beneficiary. She also testified that Peter brought home a girlfriend who became pregnant and that they had a child, known as Mama Wairimu. They stayed together for five years and then parted ways.

13. She stated that she never attended Peter's burial and does not know Sharon; however, she heard that someone named Sharon was in Peter's house.
14. She stated that she did not include the other beneficiaries in her petition filed in Kwale, nor did she inform them or disclose the details. She also stated that she wants to divide the property among the beneficiaries.
15. During re-examination, she stated that the deceased wanted both their names on the property and for her to be the beneficiary.
16. OW2 **Alice Nyambura Mwaura** adopted her witness statement dated 4<sup>th</sup> February 2025, as evidence in chief.
17. When cross-examined, she stated that she stayed in Tanzania with Lucia. Lucia had no children of her own. Lucia adopted Peter Karinde, whom they raised as their child. He got involved with Jacqueline, with whom he had a child, Wairimu; however, they later parted ways. In 2018, he got involved with Sharon, with whom they also had one child. By the time Peter died, Sharon had three children. She also stated that they have never been to Sharon's home or her parents'; however, she knows some of her relatives. Her mother confirmed that Peter was Lucia's son.
18. The witness stated that she prepared the petition filed in Kwale. She testified that she did not know that Peter was a beneficiary. She further testified that Lucia's estate comprised 3.5 acres of land in Tigon, cash in

the bank, and other assets. Ms. Mwaura stated that the estate's approximate value was Kes 8,500,000 and that they had registered the title in their own names as administrators of the late Gichungi's estate. She averred that they used to collect rent on behalf of Margaret; however, she did not provide estate accounts. She also did not include a cooperative bank account, as it was a joint account. The deceased had a family in Kiambu, though she didn't know them.

19. Upon re-examination, she stated that she denied Peter because he was not part of the family. She also said that Lucia changed because Peter beat her up and informed her that he couldn't inherit her. She also left out Mama Wairimu, though they did not have an issue with her. Further, they have been collecting rent as decided by the family.
20. OW3 Mary Nunga Kamau adopted her statement dated 4<sup>th</sup> February 2025.
21. During cross-examination, she stated that she was a neighbor of the deceased in Arusha, Tanzania, and in Diani Ukunda. The deceased lived with her husband, Francis Njenga Karanja, and had no children of her own.
22. It was her evidence that Lucia adopted a child named Karanja, the son of Lucia's sister. After Karanja died, she adopted another child, Peter Karinde, whom she raised as her own and even built a house for him. Peter married Mama Purity, with whom he later parted ways, and then married another woman, who at the time of Peter's death had 2 children and was pregnant as well.

23. In re-examination, she stated that Peter Karinde's marriage was come we stay.
24. OW4 Jackline Koli adopted her statement dated 4th February 2025 as evidence in chief. During cross-examination, she stated that her child was born in 2013 and that she left the marriage in 2016, when Lucia was still alive. Peter provided for the child to the best of his ability. She further testified that Peter's kin visited her relatives while she was pregnant; however, no ceremony was conducted.
25. She further testified that Peter did not acquire any property before his death and that her name is not included in the Kwale matter. Peter had a girlfriend who had a child and was pregnant when they started living together.
26. Upon re-examination, she stated that she is the legitimate wife and heir of Peter and that Lucia used to give her money. She stated that if Peter had a share in Lucia's estate, it should go to her.
27. OW5 Jackson Kipetuan Mairo Ole Lekindingie adopted his witness statement dated 4<sup>th</sup> February 2025.
28. When cross-examined by Mr. Magiya, he testified that he was Lucia's tenant, paying Kes 2,500 per month. He also testified that he now pays rent to Nyambura, as do the other tenants. There are 11 tenants and 2 at the other place. They all pay the same rent. His evidence was that Lucia had one child, Peter Karinde, who married Mama Wairimu and lived together for 3 years before parting ways. That Peter and Sharon lived together as

boyfriend and girlfriend. That Sharon came with one child, was pregnant, and later had another child, making them 3.

29. In reexamination, he stated that Mama Wairimu was the wife, as Peter identified her as such.
30. OW6 Peter Saitoti Karanja told the court that the issue concerns land and that he is the custodian of the titles. He stated that Lucia was his aunt and that, together with his mother, Margaret, he was appointed administrator of the estate of Gichungi, Lucia's husband. They were appointed administrators in trust of the minor, who is not known to him. Gichungi left behind Lucia and Peter Karinde.
31. It was his evidence that Peter lived with Jacqueline, aka Mama Wairimu, for four years as a wife and was blessed with one child. Peter then had another woman, Sharon, who left after his death. It was his evidence that when Peter was sick, Sharon, her sister, and another man were always in the hospital. During the funeral, there were people that Sharon described as her relatives, 2 gentlemen and a lady.
32. In reexamination, he told the court that they visited Jacqueline's parents in Mariakani, who told them to go to Kitui, which they never did. Peter and Jackline wanted Lucia to take care of them, but she declined, and as a result, they took her to the chief.
33. OW7 Josephine Wakio Mutathi adopted her witness statement of 4th February 2025. She testified that Lucia brought up Peter Karinde, who

married Jacqueline; however, there was no ceremony. He later married Sharon, who had 3 children. It was her evidence that Peter took Lucia to the chief, and that Lucia used to complain of losing money.

34. AW8 Moses Chege Ismael adopted his witness statement dated 4<sup>th</sup> February 2025. Moses testified that Peter Karinde was brought up by Lucia and was buried in Lucia's land. That Jacqueline got married there and had one child. Her parents were visited; however, they later went their separate ways.
35. His evidence was that Peter lived with Sharon for two years and that they had two children. In reexamination, he told the court that Sharon came with one child, was pregnant when she began living with Peter, and bore another child.
36. The administrator called witnesses as well.
37. PW1 Mary Waithera Ngeresa adopted her witness statement dated 24<sup>th</sup> January 2025 and told the court that Sharon is her sister-in-law and Peter Karinde her cousin, as their fathers are brothers. She stated that Lucia used to visit their home in Banana, Kiambu, with Peter. She also stated that Sharon and Peter had a customary marriage.
38. During cross-examination, she stated that Lucia's husband was Francis Njenga Gichungi, who passed away on 13<sup>rd</sup> March 2003. She also testified that she could not remember the year Sharon got married or the date of their visit to her relatives. However, she mentioned that Sharon traveled to

Banana with three other people. She stated that the properties are in the name of Margaret and Lucia.

39. During reexamination, she stated that she was permitted by Lucia to cultivate the land in Kiambu. She also stated that there is no property in Peter Karinde's name and that Sharon was chased away by Lucia's family members.
40. PW2 Isaac Karanja Muchiri adopted his witness statement of 24th January 2025. He stated that Peter Karinde was his cousin. He testified that they visited Nyanza in 2017 with Gichungi, Maria, relatives, and friends to identify themselves and exchange gifts. Sharon was identified as Peter's wife.
41. During cross-examination, he told the court that Sharon's marriage was celebrated at the chief's office. Lucia used to visit Kiambu with Sharon. He stated that Peter died before Lucia. He testified that the properties are registered in the name of Lucia and Margaret.
42. In reexamination, he stated that he was made caretaker of the land in the Banana by Lucia's husband. He averred that it was his wish for Sharon's children to go to school.
43. PW3 George Okumu adopted his witness statement from 24th January 2025. Mr. Okumu testified that Sharon is his daughter. He stated that he was visited by Peter, Isaac Karanja, Mary, and Francis Gichumbi. He recognized Sharon and Peter as husband and wife, and the family concurred.

44. During cross-examination, he told the court that Sharon's traditional wedding took place in 2017. For a Luo, a customary marriage requires a procedure: elders must be present, and both sides must be represented. Peter went with cousins. It was his evidence that in Siaya, even one introduction is enough.
45. The court noted that the witness was evasive and refused to answer questions in a straightforward manner.
46. PW4 Sharon Adhiambo Oduor adopted the replying affidavit sworn on 28th October 2024, the supplementary affidavit sworn on 27th November 2024, and the replying affidavit sworn on 7th March 2024, along with the documents attached to them, as her evidence in chief, and the latter as her exhibits.
47. She testified that she was Peter's wife and the mother of his three children. She stated that she saw Jacqueline at the funeral; however, during the time she was with Peter, she never saw her. She stated Peter had an estate of his father and mother, and that is what she was following up on.
48. During cross-examination, she told the court that they were dealing with two estates, those of Lucia and Peter. It was her evidence that she had a child before she met Peter. She stated that the properties are in the name of Lucia and Margaret and that Peter was a beneficiary of Lucia Njenga Karanja's estate.

49. It was her evidence that they had a marriage and were in the process of registering the same when Peter died. That was when Peter died; she was chased away.
50. She stated that the rent is being collected by Alice and Peter, and she would like it deposited in court. She contended that Lucia's closest relatives are her and Maria.
51. PW5 Ali Nasir Mwakibu, Chief of Diani Location, told the court that he knew Peter Karinde, the son of Lucia Njenga and husband of Sharon. He produced two letters from the chief and stated that the chief's letters dated 24th June 2024 were written at the request of Sharon Odhiambo, Peter's wife.
52. During cross-examination, he acknowledged the letter dated 24th June 2024, but not the one from 29th September 2023. He stated that he didn't know Lucia, but knew Peter and Sharon, mentioning that Peter lived with his mother. He also said he didn't know Jacqueline; however, after learning about her, he wrote to her, but she did not respond.
53. PW6 James Dzombo Ngoka, Senior Civil Registration Officer, Kwale, produced the death certificates for Lucia Njenga Karanja and Peter Karinde, as well as the birth certificates for Francis Mwatela, Purity Wairimu Karinde, Blessings Nyambura Karinde, and John Karanja Njenga. For Francis Mwatela, he stated that it did not show who the father was. For Purity, there are three entries: entry number 0181310773, registered on 1st October 2013, with the name of the father as Peter Karinde Njenga; the

second, entry number 0181807306, was registered on 23rd February 2018. The child's name is Purity Magdalene Mwacharo, and the father is John Mwacharo Mwadime. The last one has her name as Purity Wairimu Karinde and was registered at Kinango on 1st September 2023. The witness testified that Purity has three birth certificates. The last of these was nullified on 15th July 2025 after it became clear there was double registration.

54. He stated that the birth certificates for Blessings Nyambura and John Karanja were issued on the day, while that of Francis Mwatela was registered on 16<sup>th</sup> March 2018.
55. Upon the close of the respondent's case, the court directed the parties to file written submissions. The objector, through her advocates, Gitahi Gathu & Co., filed written submissions dated 26th August 2025. Counsel submitted on four issues for determination, namely, whether the petition herein is barred by the doctrine of res sub judice; whether the petitioner has proved the existence of a valid marriage to the late Peter Karinde Njenga; whether the petitioner's pleadings and representations before this honorable court were fraudulent and amounted to the concealment of material facts; and who is entitled to administer and benefit from the estate of the deceased.
56. Regarding the first issue, counsel submitted that the doctrine of res judicata is a cornerstone of the orderly judicial process, designed to prevent duplicative proceedings, avoid conflicting decisions, and protect litigants

from vexatious and oppressive litigation. Counsel relied on Section 6 of the Civil Procedure Act, which expressly bars any court from proceeding with a matter where the issues are directly and substantially in issue in a previously instituted suit between the same parties or those claiming under them, and which is pending before a court of competent jurisdiction.

57. Counsel submitted that this matter is sub judice because, at the time of filing, another matter, to wit, Kwale Succession Cause E059 of 2023, was pending, properly instituted by the objector, the deceased's lawful sister and next of kin, and that the properties listed as belonging to the deceased in the earlier matter were the same as those in the current matters. The petitioner's actions were deliberate and intended to steal a march on the objector through forum shopping. The petitioner concealed material facts from the court regarding the existence of the Kwale proceedings and also advanced a false narrative about her relationship with the deceased. Counsel urged the court to find that the matter is res sub judice, revoke the irregularly obtained grant, and direct that all questions relating to the deceased's estate herein be resolved in the Kwale Succession Cause No. E059 of 2023.

58. Regarding the second issue, counsel relied on sections 3 and 43 of the Marriage Act and submitted that the petitioner failed to prove her marriage to Peter as she did not establish that all essential rites, including dowry payment, participation of elders, and performance of ceremonies, were fulfilled. Regarding the presumption of marriage, it requires proof of long cohabitation, acts of general repute, and integration into the spouse's

family. The petitioner cannot claim long cohabitation because she began living with Peter in 2017.

59. Counsel submitted that without proof of marriage, the petitioner's claim to priority under Section 66 of the Law of Succession Act fails. Counsel urged the court to find that no marriage, whether statutory, customary, or by presumption, ever existed between the petitioner and the late Peter Karinde Njenga.
60. On the third issue, counsel relied on section 76 of the Law of Succession Act and submitted that the petitioner's pleadings are riddled with deliberate omissions, false statements, and questionable documentation, all of which are calculated to mislead the court into granting her an unlawful advantage over the true beneficiaries of the estate. It was urged that she misrepresented her relationship with Peter Karinde, as she was not lawfully married to Peter. Further, her children's paternity was doubted. Counsel submitted that her pleadings are incurably tainted by fraud, concealment of material information, and misrepresentation, and therefore any grant obtained falls within the grounds for revocation.
61. Regarding the fourth issue, counsel submitted that the objector is Lucia's blood sister and therefore a lawful beneficiary under the Law of Succession Act. That she was appointed as a co-administrator of Lucia's late husband's estate indicates that she is a trusted, close family member. The petitioner is a stranger to the family, as she was neither legally married to Peter nor recognized as part of Lucia's household.

62. Counsel submitted that Peter was not a biological child of the deceased as he was taken in informally as a boy under circumstances of rescue, not adoption, and no legal or customary formalities were ever performed to make him a lawful heir. It was submitted that Peter did not inherit and or co-own any property with Lucia, as all Lucia's assets are in her name and that of the objector under a joint ownership agreement. That reopening the proceedings in the estate of Francis Njenga would offend the principle of finality.
63. Counsel relied on Section 91(4) of the Land Registration Act and Section 2 of the Land Act, arguing that the properties in question were registered jointly between Lucia and the objector and that the objector therefore became the absolute owner immediately upon Lucia's death. The doctrine of survivorship excludes any third-party claims, including those of the petitioner.
64. Counsel further submitted that the rightful and lawful person entitled to administer Lucia's estate is the objector. Counsel urged the court to dismiss the petitioner's claim with costs.
65. The petitioner, through her advocates John Magiya & Company Advocates, filed written submissions dated 22nd September 2025. Counsel responded to the issues raised in the objector's submissions as follows.
66. Regarding the issue of res sub judice, counsel submitted that the objector was granted the power to manage the estate from this court in Mombasa Succession Cause No. 166 of 2023, the estate of Njenga Karanja

Gichumbi, husband of Lucia Njenga. Counsel further submitted that, as rightly confirmed by the objector in her viva voce evidence, the petitioner had no knowledge of the petition herein until the objection was raised.

67. Counsel submitted that the four plots are in a prime area of Diani and that their market value was not as low as the objector stated. The firm of Musyoki and Associates prepared a valuation report on the said properties in Diani alone and arrived at a value of approximately 30 million, which would be higher if the Kiambu property were included. Thus, the court at Kwale lacks pecuniary jurisdiction to handle the subject issues, and any proceedings and orders issued therein will be a nullity.
68. Counsel submitted that the res judicata issue must fail because the estate issue herein has been handled by this court, and that this court, under Article 165 of the Constitution, has supervisory jurisdiction over subordinate courts.
69. Counsel relied on section 3(2) and 29 of the Law of Succession Act and submitted that the wives and children of the deceased are his dependants and beneficiaries, and therefore the estate needs to be distributed equally to them, and therefore the rule of sub judice may not apply.
70. Counsel submitted that the objector, as an administrator and trustee of Peter, in furtherance of her illegality, abdicated her fiduciary duty and turned herself and her children, who are adults with families, into the only survivors of the late Lucia, a fact known to her to be false. The proceedings in Kwale concealed from the court that she is the remaining administrator,

who has a duty to finalize the distribution of the estate as ordered by the court. That she held the properties in trust for Peter, who had a wife and children, and/or the dependents entitled to the estate. The objector approached the court with tainted hands, and it is only fair for the court to relieve her of her duties as an administrator.

71. Counsel relied on Section 66 of the Law of Succession Act, Rule 7(7) of the Probate and Administration Rules, and Rule 26 of the said rules, and submitted that the petitioner has demonstrated that proper procedures were followed in obtaining the grant, including publication in the Kenya Gazette, and that vague and general allegations of fraud cannot suffice, given the serious nature of such claims. That the objector's conduct is geared toward depriving the petitioner of deserved peace of mind and disinheriting the children of the late Peter. That the application for revocation is in bad faith and ought to be revoked.
72. Counsel relied on Section 29 of the Law of Succession Act and submitted that the allegation that Lucia and Francis didn't have a son, and that if there was one, he would have been adopted, contravenes the provision of law. Counsel invoked the doctrine of adoption by estoppel.
73. Counsel relied on several Court decisions regarding the presumption of marriage and submitted that the petitioner and Peter lived together as husband and wife for five years with their mother, Lucia Njenga, and were blessed with three children. Despite entering the marriage with a child, Peter took the child as his own and catered to his needs, and thus the child is a dependent. The petitioner was unceremoniously kicked out by the

petitioner's son and daughter, who are now intermeddling with the deceased's estate.

74. Counsel submitted that Peter's family has priority in administering the estate, and the objector, having conflicted herself, ought to step aside forthwith and account for the entire estate from the time she took over until the handover. She was also urged to surrender all documents in her possession pertaining to the estates of Lucia Njenga and Peter Karinde to the court for onward transmission to the petitioner herein. Counsel urged the court to dismiss the summons with costs.

75. I have considered the summons, the responses thereto, and the parties' written submissions. Has a case for revoking the grant in these two matters been made?

76. Section 76 of the Law of Succession Act provides for grounds of revocation as follows;

**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—

(i) To apply for confirmation of the grant within one year from the date thereof, or such longer period as the court order or allow; or

(ii) To proceed diligently with the administration of the estate; or

(iii) To produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83 or has produced any such inventory or account which is false in any material particular; or

(e) That the grant has become useless and inoperative through subsequent circumstances.

77. On the court's power to revoke a grant, the court in the case of **Albert Imbuga Kisigwa v Recho Kawai Kisigwa [2016] KEHC 1528 (KLR)** stated,

*“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 wrongdoing 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*

***the interests of all beneficiaries entitled to the deceased's estate and ensure that the action taken will be for the interest of justice.”***

78. In this case, the objectors have urged the court to revoke the grant issued to Sharon on the grounds that she was not Peter's wife, Peter was not Lucia's biological son, she obtained the grant by concealing material facts, and that this matter is res judicata.

79. Regarding the petitioner's status as Peter Karinde's wife, the evidence presented by both sides before the court shows that she lived with Peter from 2017 until his death and had three children, one from Sharon's previous relationship. The objector's argument is that Sharon was not legally married because no ceremony was conducted. On the other hand, Sharon has argued that Peter and his relatives visited her home in Luo Nyanza; however, no sufficient evidence was tendered to support that claim. That raises the question of whether Peter and Sharon were married.

80. In dealing with the issue of presumption of marriage in a case where parties have lived together, and no ceremony was conducted, the Supreme Court in the case of MNK v POM; Initiative for Strategic Litigation in Africa (ISLA) (Amicus Curiae) [2023] KESC 2 (KLR) stated that:-

**“We find it prudent at this juncture to lay out the strict parameters within which a presumption of marriage can be made:**

- 1. The parties must have lived together for a long period of time.**
- 2. The parties must have the legal right or capacity to marry.**

- 3. The parties must have intended to marry**
- 4. There must be consent by both parties**
- 5. The parties must have held themselves out to the outside world as being a married couple.**
- 6. The onus of proving the presumption is on the party who alleges it.**
- 7. The evidence to rebut the presumption has to be strong, distinct, satisfactory and conclusive.**
- 8. The standard of proof is on a balance of probabilities.”**

81. The evidence tendered by both parties, including witness testimony, confirms that Peter and Sharon lived together for a considerable period of time and held each other out as spouses. Members of their community viewed them as such. They had children together. While the length of time is a strong indicator, it is not the sole determinant. There is no doubt that both had the capacity to marry and intended to do so. It is therefore my view that a presumption of marriage between Sharon and Peter ought to be made. In the circumstances, I find and hold that Sharon was Peter's wife for purposes of succession.

82. There is no dispute that Peter was adopted (though not formally) and raised by Lucia as her own son. Even in death, she recognized him as such. He was buried on her homestead. The objectors' witnesses confirmed as much. In my view, the contention by the counsel for the petitioner/administrator that there was adoption by estoppel has merit.

83. The law on dependants is found in Section 29 of the Law of Succession Act, which provides as follows:

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, grandparents, 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.

84. In this case, Peter falls under category (b), which includes children the deceased had taken into her family as his own. Therefore, he is a dependant for succession purposes.

85. On whether Sharon's children are beneficiaries of the deceased estate, the court in the case of **In the Matter of the estate of Veronica Njoki Wakagoto (Deceased) [2013] KEHC 1930 (KLR)** stated: -

**“Under Part V, grandchildren have no right to inherit from their grandparents who die intestate after 1<sup>st</sup> July 1981. The argument is that such grandchildren should inherit from their own parents. This means that the grandchildren can only inherit their grandparents indirectly through their own parents, the children of the deceased. The children inherit first, and**

thereafter, the grandchildren inherit from the children. The only time grandchildren inherit directly from their grandparents is when the grandchildren's own parents are dead. The grandchildren step into the shoes of their parents and take directly the share that ought to have gone to the said parents. In this case, the applicant's mother survived the deceased. She is the one entitled under Part V to inherit her mother, the applicant's deceased grandmother. The applicant clearly has no claim under Part V so long as his mother survived the deceased."

86. In this case, Peter predeceased Lucia. Accordingly, it is my view that Peter's children are entitled to inherit Lucia's estate as the grandchildren on behalf of their father.

87. On whether Sharon concealed material facts, the objector's argument is that she did not disclose that there are proceedings ongoing in the Kwale Law Courts and that she is not the wife of the late Peter. In her evidence before the court, the objector, Margaret Gaciku, conceded that she did not disclose, inform, or include any other person in the Kwale proceedings. The petitioner, on the other hand, has argued that she only learnt of the said proceedings when the objection herein was raised. The court in the case of **In re Estate of Julius Ndubi Javan (Deceased) [2018] KEHC 8523 (KLR)** observed as follows on non-disclosure of material facts from the court: -

**Needless to state that, in any judicial proceeding, parties must make full disclosures to the court of all material facts in the**

case, including succession cases. This general rule of law emphasizes the utmost good faith (*uberimae fidei*) of parties who take part in or are subject to court proceedings. The said responsibility is part of justice itself. Accordingly, non-disclosure of material facts undermines justice and introduces festering waters into the pure streams of justice; such must, immediately be subjected to serious reverse osmosis to purify the streams of justice, if society is to be accordingly regulated by law.”

88. The objector herein has come to court with tainted hands and cannot be heard to blame the petitioner for what she orchestrated. Therefore, the said claim must fail.

89. On whether this matter is subjudice the court in the case the court in the case of **Showcase Properties Limited v Kenya Commercial Bank Ltd & another [2023] KEHC 24601 (KLR)** stated: -

“The rationale behind the doctrine of subjudice is to prevent situations of having conflicting orders emanating from two or more different Courts over the same subject matter. A five-judge bench in the case of **David Ndii & others versus Attorney General & others 2021 eKLR**, had this to say in regard to the doctrine of subjudice –“The rationale behind this provision (Section 6 of the Civil Procedure Act) is that it is vexatious and oppressive for a claimant to sue concurrently in two courts. Where there are two courts faced with substantially the same question or issue, that question or issue should be determined in only one of those courts, and the court will....”

**For the doctrine of subjudice to be successfully invoked, the person seeking to invoke it has to demonstrate that the matter in issue in the subsequent suit is directly and substantially in issue in a previously instituted suit, proceedings must be between the same parties, or between parties under whom they or any of them claim, litigating under the same title and such suit or proceeding must be pending in the same or any other Court having jurisdiction in Kenya to grant the relief claimed.”**

90. I am not persuaded that the subordinate court in Kwale can handle this estate, as the net value thereof appears to me to exceed the pecuniary jurisdiction of that court. For there to be *res subjudice*, the Kwale court must have jurisdiction; where there is a lack of jurisdiction, the doctrine must fail. In any case, as earlier stated, the objectors have come to this court with unclean hands and therefore cannot invoke the doctrine of sub judice. Therefore, the same must fail.
91. The upshot of the foregoing is that the two summons for revocation of the grant must fail. They lack merit and are hereby dismissed with no orders as to costs.
92. It is so ordered.

**Dated and signed in Mombasa this 30<sup>th</sup> day of January 2026. Delivered virtually through Microsoft TEAMS.**

**Gregory Mutai**

## **JUDGE**

In the presence of:-

Mr Gitahi Gathu, for the Objectors/Applicants;

Mr Magiya for the Petitioner/Respondents; and

Ms Bancy – Court Assistant.

Original