

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MILIMANI
FAMILY DIVISION
SUCCESSION CAUSE NO. 1931 OF 2009

IN THE MATTER OF THE ESTATE OF PETER KARUGU
GUANDAI (DECEASED)

WINIFRED NYAMBURA KARUGU

PETITIONER

-VERSUS-

MARY NJERI MBURU **1ST**

RESPONDENT

MUMBI GUANTAI **2ND**

RESPONDENT

JUDGMENT

1. The deceased died intestate on 26th August 2009. The petitioner petitioned this court for the grant of letters of administration intestate vide a Petition dated 7th September 2009. The Petitioner simultaneously applied for a Limited Grant *ad litem* and *ad colligenda bona*, which was duly issued to her on 29th April 2010.
2. Following the publication of the petition for grant in the Kenya Gazette on 23rd October 2009, the respondents lodged an objection, filed an answer to the petition, and, contemporaneously, presented a cross-petition, all dated

5th November 2009. They sought to be appointed administrators of the estate.

3. In their cross-petition, they described themselves respectively as widow and guardian of the deceased's children, and as mother/dependant and co-trustee on behalf of the minor children of the deceased.
4. In their answer to the petition, the respondents contended that the petition ought to have been dismissed on the ground that the petitioner had interests adverse to the estate and was therefore unsuitable to be appointed as an administrator.
5. According to the respondents, the petitioner had been estranged from the deceased for over two years prior to his death and had been prosecuting **Nairobi Divorce Case No. 137 of 2007** against him. They further stated that the petitioner was the plaintiff in **Nairobi HCCC No. 34 of 2007**, in which she sought to appropriate part of the deceased's property, and that granting her letters of administration would have prejudiced the estate's position in that litigation.
6. Additionally, they alleged that the petitioner had deliberately omitted two motor vehicles and immovable property known as Nairobi LR No. 90/122 (Loresho house) from the list of assets, which omission they interpreted as evidence of a lack of candour and unwillingness to faithfully, honestly and justly administer the estate.
7. The objection reiterated these grounds and asserted that the petitioner had filed the succession cause without

consulting or informing them and had concealed not only their beneficial interests but also certain assets and liabilities of the estate. The respondents further alleged that the petitioner had already intermeddled with the estate by seeking to take possession of motor vehicles belonging to the deceased while omitting the Loresho house from the inventory, thereby attempting to deprive the estate of those assets.

8. In essence, the dispute centred on competing claims to administration, allegations of concealment of estate property, and the question of suitability and priority for appointment as administrator in light of the pending matrimonial and civil proceedings that had involved the deceased prior to his death.
9. The petitioner filed an Answer to Objection and Cross Petition dated 3rd December 2009. She argued that the cross-petition was fatally defective for failure to include proper sureties and a duly stamped administration bond as required by law. She further maintained that the 1st respondent was neither a wife nor a dependant of the deceased, asserting that the deceased had been lawfully married to her under the African Christian Marriage and Divorce Act on 6th December 1986 and that the marriage had subsisted until his death. She annexed a copy of the marriage certificate in support of that position.
10. She also alleged that 1st respondent was not morally fit to administer the estate, claiming that she had been mentioned in theft and forgery cases in the media.

Additionally, she relied on pleadings filed by the deceased in Divorce Cause No. 137 of 2007, in which the deceased had described the 1st respondent as “*merely a surrogate*” and not his wife.

11. With respect to the 2nd respondent, she contended that she was not a dependant of the deceased at the time of his death, had sufficient means from her late husband’s estate, was 81 years old, and was therefore unfit to administer the estate. She further denied knowledge of the deceased having any children outside wedlock and contested the paternity of the children named in the cross-petition, asserting that the birth certificates annexed were not conclusive proof of paternity and alleging that one of the children could not be a child of the deceased.
12. The petitioner stated that the divorce proceedings had been pending at the time of the deceased’s death but had been overtaken by events, and that **HCCC No. 34 of 2007 (O.S.)**, brought under Section 17 of the Married Women’s Property Act, concerned only the division of matrimonial property and had likewise been overtaken by events upon the deceased’s passing. She therefore denied that there existed any conflict of interest arising from those proceedings.
13. She further averred that all the assets forming the estate had been acquired jointly by herself and the deceased during their marriage between 1986 and 2007, and that she had provided both direct and indirect contributions toward their acquisition. She asserted that

Loresho house was registered in their joint names as their matrimonial home and, having survived the deceased, the property did not form part of the estate. She also contended that its value had been overstated. Additionally, she stated that motor vehicles, registration numbers KAC 640R and KAK 640G, were registered in her sole name and therefore did not form part of the estate.

14. She described herself as the widow and sole beneficiary of the deceased's estate, cited her professional standing and public appointments as evidence of her moral fitness, and maintained that she was best placed to administer the estate.

15. On 18th May 2010, this court directed parties to file affidavits setting out the gist of their respective cases.

16. The petitioner swore two affidavits dated 1st July 2010 and 12th October 2010 in support of her petition for grant of letters of administration. She deposed that she was the lawful wife of the deceased, having married him on 6th December 1986 under the African Christian Marriage and Divorce Act, and that their marriage subsisted until his death. She added that although the couple ceased cohabitation in 2007, their marriage had never been dissolved before the deceased's demise.

17. She explained that she had filed Nairobi Resident Magistrate's Divorce Cause No. 137 of 2007 on grounds of cruelty, desertion and adultery, and had also instituted Nairobi High Court Civil Case No. 34 of 2007 (O.S.) under section 17 of the Married Women's Property

Act seeking division of matrimonial property. Both matters, however, had not been heard and determined by the time of the deceased's death.

18. The petitioner stated that she had filed the present petition for the grant of letters of administration on 8th September 2009 after establishing that the deceased had died intestate. In support of the petition, she had enumerated the assets known to her forming part of the estate and estimated their total value at approximately Kshs. 253,030,000.
19. She further stated that most of the assets comprised real property and shares in various companies, including shares in Kargua (K) Construction Company Limited, Kargua Estates Limited, and Africana Timber Mills Limited. She maintained that these assets had been acquired during the subsistence of her marriage with the deceased and that she had contributed both directly and indirectly to their acquisition through her employment and financial investment.
20. According to the petitioner, she had been continuously employed throughout the marriage and had progressed in her career from a lecturer at Jomo Kenyatta University of Agriculture and Technology (JKUAT) to the Managing Director of JKUAT Enterprises Limited and through her earnings and financial contributions, she had supported the acquisition and maintenance of several properties that formed part of the estate and had also

continued to maintain certain assets, including farms that required constant upkeep.

21. The petitioner deposed that she paid workers and invested in the continued productivity of these properties even during the period of separation between herself and the deceased.

22. The petitioner also addressed the objection and cross-petition filed by the respondents. She stated that the 2nd respondent was the deceased's elderly mother, who possessed substantial property inherited from her late husband's estate and therefore was not a dependant of the deceased. She further stated that the 1st respondent was not a wife of the deceased and that no marriage had ever been contracted between her and the deceased under any system of law. She maintained that the deceased's marriage to her had been monogamous under statute and that he could not have contracted another marriage without violating the law. She also disputed the authenticity of the birth certificates produced in support of the cross-petition and contested the paternity of the children attributed to the deceased.

23. The petitioner further clarified that certain properties alleged by the objectors to have been concealed from the estate did not in fact form part of the estate. She stated that the Loresho house had been registered in the joint names of herself and the deceased as joint proprietors and, therefore, by virtue of the principle of survivorship, the property automatically vested in her upon the death of

the deceased. She also stated that motor vehicles KAC 640R and KAK 640G were registered in her sole name and therefore did not form part of the estate.

24. In the affidavit dated 12th October 2010, the petitioner proposed a mode of distribution of the estate. She reiterated that the respondents were not entitled to any share of the estate. However, she stated that if the court were to find that the children attributed to Mary Njeri Mburu were dependants of the deceased, she proposed that Michael Mathew Guandai be allocated L.R. No. 72/866 House No. 177 Southlands, Nairobi together with the income derived therefrom, and that Joy Anne Mumbi be allocated L.R. No. 72/1322 Civil Servants Estate Nairobi together with the income derived therefrom, with the properties to be held in trust for their upkeep and education. She maintained that the proposed distribution was fair in the circumstances and urged the court to consider her contributions to the acquisition of the estate assets as well as her priority as the surviving spouse.

25. The 1st respondent swore an affidavit dated 2nd July 2010. She deposed that she was a widow and dependant of the deceased with whom she had cohabited as his 2nd wife for approximately 17 years from 1992 until his death on 26th August 2009. She stated that their union was conducted under Kikuyu customary law with the knowledge and acceptance of both families and that the deceased recognised her as his wife. She further deposed that the union was blessed with two children, Michael

Matthew Guandai and Joy Anne Mumbi, whom the deceased acknowledged and supported.

26. The 1st respondent averred that she lived with the deceased in various residences, including Nairobi West and later House No. 177 Southlands Estate, where she had resided with the children since 1996. She stated that the deceased provided for the family and catered for their upkeep, including school fees, medical expenses and general maintenance. She further deposed that during the deceased's illness she cared for him as next of kin and settled several medical bills, and that upon his death the burial permit was issued to her. According to the 1st respondent, the petitioner had left the matrimonial home in 2007 and instituted divorce and matrimonial property proceedings, after which the deceased lived primarily in the Southlands residence until his demise.

27. The 1st respondent also outlined the assets forming part of the deceased's estate, estimating their value at approximately Kshs. 244,750,000. She listed several residential and commercial properties located in Southlands, Civil Servants Estate, Nairobi West, Industrial Area, Loresho, Lavington, Thika and Transmara, together with agricultural land and proposed development projects including a golf course and tented camp in the Maasai Mara. She stated that some of the properties had been settled on her to collect rent for the upkeep of the children. She further described the deceased's business interests, including Kargua (K) Construction Co. Ltd,

Kargua Estates Ltd, Africana Timber Mills, Wuantai Holdings Ltd and Wuantai Golf and Tented Camp Ltd, explaining that the deceased was the principal shareholder and manager of these ventures. She also set out the liabilities of the estate amounting to approximately Kshs. 19,688,862, comprising debts owed to the City Council of Nairobi, CMC Motors, advocates, Kenya Power and other creditors.

28. The 1st respondent further deposed that two motor vehicles belonging to the deceased had been registered in the petitioner's name only because they had been purchased through the petitioner's duty-free facility, but that the deceased had paid for the vehicles and all related expenses. She maintained that the petitioner merely held them in trust and alleged that after the deceased's death one of the vehicles was released to the petitioner without the family's consent and was later seen being driven by an unknown person.

29. She also described the deceased's declining health due to diabetes and heart complications, asserting that his condition worsened when caveats were placed on his properties, preventing him from raising funds for his business operations and medical treatment. She narrated the events surrounding the deceased's death and funeral and accused the petitioner of excluding her and the children from recognition as members of the deceased's family.

30. The 1st respondent contended that the petitioner was unsuitable to administer the estate due to the pending divorce and matrimonial property disputes and her conduct regarding estate assets. She therefore urged the court to appoint joint administrators and proposed that the estate be distributed equally among five beneficiary units so as to safeguard the interests of all dependants.
31. The 2nd respondent swore an affidavit dated 2nd July 2010. She deposed that she was the mother of the deceased, and that following the death of her husband in 2004 the deceased had assumed responsibility for her upkeep, including paying for her medical expenses. She further stated that she was a dependant of the deceased and also a co-trustee for the minor children of the deceased, Michael Mathew Guandai and Joy Anne Mumbi, whom the deceased had entrusted her to assist in caring for.
32. The 2nd respondent averred that she had known the petitioner since she had been introduced to the family as the deceased's bride-to-be and that during the early years of the marriage they enjoyed a cordial relationship. However, she stated that the petitioner later disclosed that she was unable to bear children and was planning to undergo an operation to remove her uterus. She deposed that when she suggested the possibility of adoption the petitioner declined.
33. According to the 2nd respondent, the deceased subsequently discussed the matter with his parents and

was granted their blessing to marry a second wife. She stated that the deceased thereafter introduced the 1st respondent as his 2nd wife and that the family later visited her parents in Nyandarua where dowry negotiations were undertaken and the first payment was made.

34. The 2nd respondent further deposed that the deceased lived with the petitioner for some time before they moved to Loresho house, while the 1st respondent remained at the Southlands residence. She stated that the deceased and the 2nd wife were blessed with two children named after members of the family and that the deceased was proud of them and frequently visited her with his second family. She averred that relations between her and the petitioner deteriorated after the second marriage and that the petitioner stopped visiting her home.

35. She further deposed that in 2007, the petitioner filed divorce proceedings against the deceased and refused attempts at reconciliation. According to her, after the petitioner left the matrimonial home, the deceased moved permanently to the Southlands residence, where he lived with the 1st respondent and children, although he maintained the Loresho house.

36. The 2nd respondent also narrated the events surrounding the deceased's illness and death in August 2009. She stated that she was informed by the 1st respondent that the deceased had been admitted to Karen Hospital and that the following morning she received news that he had passed away. She further deposed that when

she informed the petitioner and requested her cooperation in funeral arrangements, the petitioner insisted that she would not participate in the funeral if the 1st respondent was involved. She stated that attempts by relatives to persuade the petitioner to cooperate were unsuccessful.

37. She also deposed that the petitioner placed a death announcement in the newspaper without consulting the family and that the announcement excluded the 1st respondent and the children, which caused distress and embarrassment to the family. She further stated that although the petitioner attended the funeral, she did not participate in the preparations and kept her distance from the family.

38. The 2nd respondent stated that after the petition for grant of letters of administration was gazetted, she discovered that the petitioner had excluded both the 1st respondent and the children from the succession proceedings. She maintained that the deceased had two wives and that this fact had always been known to the petitioner, her family and the extended family.

39. Mburu Njoroge, the 1st respondent's father, swore an affidavit dated 2nd July 2010. He deposed that he kept records of dowry negotiations and payments for his children's marriages, including that of the 1st respondent.

40. He deposed that in 1993, the 1st respondent introduced the deceased to the family as the man she was living with and informed them that she was expecting a child. In 1994, the deceased visited their home together

with 1st respondent and their child and gave him Kshs. 20,000. He further stated that in 1995, the deceased and his parents visited their home for dowry negotiations, during which a payment of Kshs. 50,000 was made, and the family also received gifts, including a blanket and a bedcover.

41. Mburu Njoroge further stated that the deceased and the 1st respondent continued to maintain a close relationship with him and frequently visited his home. Whenever he travelled to Nairobi, he would also visit them at their residence in Southlands or at their offices. He deposed that the deceased often provided him with financial assistance whenever they met and occasionally gave him money for transport and household needs.

42. He further deposed that after the birth of the second child, the deceased once visited him, accompanied by the 1st respondent and their two children, and discussions arose concerning additional dowry and the possibility of purchasing land for him. The deceased offered to assist him in acquiring land from his brother in Ngong, and in 2004, the land measuring 10 acres was purchased for him at a cost of Kshs. 1.2 million.

43. The deponent also stated that in 2007, the deceased accompanied him when he went to his wife's home in Mang'u, Gatundu, to pay the final dowry and further assisted him with money for the payment. In 2008, when he was admitted to hospital in Nairobi for an operation,

the deceased visited him and gave him Kshs. 20,000 towards medical expenses.

44. He further deposed that the last time the deceased visited his home was on 24th December 2008, when he came with the 1st respondent and their children. He stated that during the deceased's illness, he and his family visited him at Karen Hospital, and after his death, they attended the funeral.

45. Finally, Mburu Njoroge stated that he had enjoyed a good relationship with the deceased as a son-in-law and considered the dowry obligations satisfied, particularly after the deceased's assistance in purchasing land in 2004.

46. One Eng. Wolleston Kamau Ngumo swore an affidavit dated 2nd July 2010. He stated that he was a professional colleague, close friend and confidant of the deceased. He deposed that he had known the deceased since 1989, when he was appointed the supervising structural and civil engineer for the Trans Nzoia District Headquarters Project in Kitale, where the deceased's company, Kargua (K) Construction Company Ltd, had been awarded the government contract. Through their professional interactions and frequent consultations during the project, the two developed a close friendship that extended beyond their official working relationship.

47. The deponent stated that through this friendship, he became acquainted with the deceased's extended family, including his parents, siblings and later his wives. He

recalled meeting the deceased's first wife, the petitioner, during visits to the deceased's homes in Southlands and later Loresho, including social gatherings such as New Year parties. From their conversations, he came to understand that the deceased and the petitioner had no children together, a matter that caused the deceased considerable emotional distress, particularly when questioned in social circles about his lack of children.

48. The deponent further stated that the deceased expressed a strong desire to have children and confided in him that the petitioner might not be able to bear children. According to him, the deceased had considered options such as adoption or marrying a second wife, although he indicated that the deceased was not in favour of adoption. In 1992, the deponent met the 1st respondent, who had been introduced to him by the deceased during a visit to Eldoret. He stated that thereafter he met the deceased and the 1st respondent on numerous occasions in Kitale, Eldoret and Nairobi, and that the deceased informed him that he had married Njeri as his second wife.

49. The deponent recalled the deceased's excitement when his son Matthew Michael Guandai was born and how he travelled urgently to be with his wife and newborn child. He stated that after the birth of his son, the deceased became noticeably happier and that his second family grew close to the deponent's own family. According to him, the two families frequently visited each other and developed a close relationship over time.

50. He further deposed that, to his knowledge, the deceased maintained two homes, one at Loresho and another at Southlands, corresponding to his two families. He also stated that the deceased maintained cordial relations with both families and treated them equally. The deponent stated that he continued to interact with both the deceased and the 1st respondent in the course of his work at the Ministry of Public Works, where the deceased would occasionally visit him regarding government project matters.
51. The deponent also referred to events following the breakdown of the deceased's marriage with the petitioner when she filed for divorce in 2007. He stated that the deceased was deeply distressed by the divorce proceedings and unsuccessful attempts at reconciliation. Over time, he also observed a deterioration in the deceased's health, which he attributed partly to the emotional strain from the divorce and financial difficulties arising from unpaid government dues.
52. During the deceased's illness, the deponent stated that he visited him frequently at home and in the hospital and remained in communication with the 1st respondent regarding his condition. After the deceased's death, the deponent participated in the funeral arrangements and served as Chairman of the Funeral Committee. He stated that the committee rejected attempts by the petitioner to exclude the 1st respondent from recognition during the funeral preparations and

ensured that the children were acknowledged and allowed to participate.

53. The deponent stated that after the funeral, attempts were made by friends and relatives to reconcile the two families and resolve the dispute over the estate, but these efforts were unsuccessful, and the matter proceeded to court. He concluded by describing the deceased as a hardworking, principled and peace-loving man who had maintained two families that coexisted peacefully during his lifetime.
54. During the hearing of this matter on 6th July 2010 and 17th July 2012, the respondents gave their *viva voce* evidence. On 15th November 2017, Eng. Wolleston Kamau Ngumo gave his testimony. The petitioner gave her testimony on 17th February 2020. They all adopted their aforementioned affidavits, and they were duly cross-examined.
55. On 3rd July 2023, this court directed that the 1st respondent's children, Michael Matthew Guandai and Joy Anne Mumbi, undergo DNA testing. A DNA report prepared by the Kenya Medical Research Institute (KEMRI) and dated 14th April 2025 was subsequently filed in court.
56. The DNA report indicated that three individuals presented themselves for testing, namely Michael Matthew Guandai, Joy Anne Mumbi, and Anthony Kiarie Guandai, the brother of the deceased. The first test sought to determine whether Michael Matthew Guandai and Joy Anne Mumbi were siblings. Statistical analysis yielded

a 59.31% probability of siblingship, which the report categorised as inconclusive, as it did not provide sufficient evidence to confirm or exclude a sibling relationship.

57. The second test examined whether Michael Matthew Guandai and Anthony Guandai were related. The statistical analysis yielded a probability of relationship of 81.9%, which was also considered inconclusive for purposes of determining an uncle-nephew relationship. However, further analysis of the Y-chromosome markers (DYS391, DYS576 and DYS570) indicated that Michael Matthew Guandai and Anthony Guandai share a common paternal lineage, a finding consistent with an earlier Y-chromosome DNA test conducted on 20th July 2023.

58. The third DNA test sought to establish whether Joy Anne Mumbi and Anthony Guandai were related. The statistical analysis yielded a 12.12% probability of relationship, which the report similarly categorised as inconclusive, as the result did not provide sufficient evidence to confirm or exclude an uncle-niece relationship.

59. The report further explained that, according to accepted scientific interpretation, a probability of 90% or more constitutes strong evidence of a relationship, while a probability below 10% excludes the relationship. Since the results of all three autosomal DNA tests fell between 10% and 89%, they were classified as inconclusive. Nevertheless, the Y-chromosome analysis confirmed that

Michael Matthew Guandai and Anthony Guandai share a paternal lineage.

Determination

60. I have considered the pleadings before the court, the viva voce evidence and the documentary evidence on record.
61. The central issues arising for determination in this matter are as follows:
- a) Who between the parties is entitled to administer the estate of the deceased?***
 - b) Do the 1st respondent and her children qualify as beneficiaries or dependents of the deceased within the meaning of the law?***
 - c) What assets form part of the deceased's estate?***
 - d) What should be the mode of distribution of the deceased's estate?***
62. It is not disputed that the petitioner was married to the deceased on 6th December 1986 under the African Christian Marriage and Divorce Act (*now repealed*). That marriage was a statutory monogamous marriage and had not been dissolved by the time of the deceased's death on 26th August 2009. Consequently, the petitioner was the lawful widow of the deceased and, by virtue of section 66 of the Law of Succession Act, enjoys priority in the appointment as administrator of the estate.

63. The respondents, however, contended that the 1st respondent was also a wife of the deceased under Kikuyu customary law and that their union produced two children, namely Michael Matthew Guandai and Joy Anne Mumbi. I have carefully considered the affidavits and *viva voce* evidence tendered by the parties and their witnesses. The evidence presented by the 1st respondent, her father, Mburu Njoroge, and Eng. Wolleston Kamau Ngumo, a close friend and confidant of the deceased, consistently described a long-standing relationship between the deceased and the 1st respondent spanning several years.
64. From the material placed before the court, the 1st respondent demonstrated that she cohabited with the deceased for a considerable period of time and that they lived together as husband and wife. The evidence further showed that the union was known to and recognised by members of both families. In particular, the affidavit sworn by Mburu Njoroge, the father of the 1st respondent, described dowry negotiations and payments that took place between the two families, including visits made by the deceased and his parents and payment of dowry. This evidence was corroborated by the affidavit of Eng. Wolleston Kamau Ngumo, who confirmed that the deceased openly introduced the 1st respondent as his second wife and maintained a separate home with her and the children.
65. I am therefore satisfied that the relationship between the deceased and the 1st respondent was not a casual

association but a long-standing union characterised by cohabitation, family recognition, and evidence of performance of essential customary rites, which are important indicators of a customary marriage.

66. This court must, however, consider these assertions within the legal framework governing marriages celebrated under statute. The petitioner's marriage to the deceased was contracted under the African Christian Marriage and Divorce Act, which established a monogamous union. The legal effect of such a marriage is that, during its subsistence, neither party has the capacity to contract another valid marriage. This position is now codified under section 6(2) of the Marriage Act, 2014, which provides that:

“A marriage celebrated under Part III (Christian marriage) or Part IV (civil marriage) is monogamous.”

67. Nonetheless, succession law adopts a broader and more protective approach. Section 3(5) of the Law of Succession Act provides that:

“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.”

68. The Court of Appeal has affirmed the protective intent of this provision. In ***Irene Njeri Macharia v Margaret Wairimu Njomo & Another [1994] eKLR***, the Court held that section 3(5) was enacted to protect women and children of unions contracted under customary law from disinheritance even where the deceased had contracted a statutory marriage.

69. In light of the evidence demonstrating cohabitation, recognition by the families, and the performance of customary rites, I am satisfied that the 1st respondent falls within the category of persons contemplated under section 3(5) of the Law of Succession Act for purposes of succession.

70. In the circumstances, I find that the 1st respondent established the existence of a union with the deceased recognised for purposes of succession under section 3(5) of the Law of Succession Act. Consequently, the 1st respondent qualifies as a wife of the deceased for purposes of succession. In order to safeguard the interests of all beneficiaries and ensure proper administration of the estate, the court finds it appropriate that the petitioner and the 1st respondent shall jointly administer the estate of the deceased. The 1st respondent shall therefore

serve as co-administrator together with the petitioner and shall also be recognised as a beneficiary of the estate.

71. The subsequent question is whether the children attributed to the 1st respondent can be regarded as children of the deceased for purposes of succession. In order to address that question, the court directed that DNA testing be undertaken.

72. The DNA report prepared by KEMRI dated 14th April 2025 indicated that three individuals presented themselves for testing: Michael Matthew Guandai, Joy Anne Mumbi, and Anthony Kiarie Guandai, a brother of the deceased. The results of the autosomal DNA tests were inconclusive in determining the sibling relationship between Michael Matthew Guandai and Joy Anne Mumbi and the alleged uncle-nephew and uncle-niece relationships involving Anthony Guandai. However, analysis of the Y-chromosome markers confirmed that Michael Matthew Guandai and Anthony Guandai share a common paternal lineage.

73. Although the autosomal DNA tests did not conclusively establish the precise biological relationship, the Y-chromosome analysis strongly indicates that Michael Matthew Guandai belongs to the same paternal lineage as the deceased's family. The court also takes into account the consistent evidence from several witnesses that the deceased openly acknowledged and supported the children attributed to the 1st respondent during his lifetime.

74. In succession matters, the court is not restricted to strict biological proof alone but must also consider the broader statutory definition of “*child*” under section 3 of the Law of Succession Act, which includes children whom a deceased person had expressly recognised or accepted as his own or for whom he had assumed parental responsibility.

75. Having considered the totality of the evidence, the court is satisfied that Michael Matthew Guandai was sufficiently connected to the paternal lineage of the deceased and had been treated and recognised by the deceased as his child. In respect of Joy Anne Mumbi, while the DNA results were inconclusive, the surrounding circumstances and testimony presented demonstrate that she was brought up and maintained as part of the deceased’s family.

76. Accordingly, the court finds that both Michael Matthew Guandai and Joy Anne Mumbi qualify as children of the deceased for purposes of succession under section 3 of the Law of Succession Act.

77. *Was the 2nd respondent a dependent of the deceased prior to his death?* The term *dependant* is defined under section 29 of the Law of Succession Act. Under section 29(b), dependants include:

“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.”

78. The provision, therefore, makes it clear that parents do not automatically qualify as dependants. Unlike spouses and children under section 29(a), a parent must demonstrate that he or she was being maintained by the deceased immediately before the deceased's death.

79. In the present case, the 2nd respondent deposed that following the death of her husband in 2004, the deceased assumed responsibility for her upkeep and assisted her with expenses, including medical care. However, the petitioner contested this position and asserted that the 2nd respondent had inherited substantial property from her late husband and therefore was not dependent on the deceased.

80. The burden of proving dependency rests on the person alleging it. The 2nd respondent was, therefore, required to demonstrate that she was, in fact, being maintained by the deceased immediately prior to his death. While the deceased might have occasionally assisted his mother, the material placed before the court does not sufficiently demonstrate that she was dependent on him for her maintenance within the strict meaning of section 29(b) of the Law of Succession Act.

81. Consequently, I find that the 2nd respondent has not proved that she was a dependant of the deceased within the meaning of section 29(b) of the Law of Succession Act.

82. *What assets form part of the deceased's estate?* The petitioner and the respondents have mentioned the following assets and annexed evidence of the assets being in the deceased's name.

a) L.R. No. 72/866 - House No. 177, Southlands Estate, Nairobi

83. It is not in contention that the deceased, the 1st respondent and her children lived in this property during the deceased's lifetime and after his death.

b) L.R. No. 72/1322 - Civil Servants Estate, Nairobi

84. The property was purchased in 1996. The 1st respondent deposed that she collected rent for her and the children's upkeep since 2003.

c) L.R. No. 72/1226 - Civil Servants Estate, Nairobi

85. The property was purchased in 1996. The 1st respondent deposed that she has been collecting rental income from the property.

d) L.R. No. 209/11332 - Nairobi West, Nairobi

86. The Petitioner put a caveat on the property.

e) L.R. No. 209/11430 - Nairobi West, Nairobi

87. This property is adjacent to plot 11332.

f) L.R. No. 209/11431 - Nairobi West, Nairobi

88. This property is adjacent to plot 11332

g) L.R. No. 209/11432 - Nairobi West, Nairobi

89. This property is adjacent to plot 11332

h) L.R. No. 209/11470 - Industrial Area, Nairobi

90. Purchased in 1997. The 1st respondent deposed that she has been collecting rental income from the property.

i) L.R. No. 136568/10 - Lavington, Nairobi

91. The property was purchased in 1994, before the 1st respondent came into the picture. The 1st respondent deposed that it was charged by a financial institution to secure funds for Kargua (K) Construction. She further deposed that the deceased had promised her that she would be settled on that property.

92. On the other hand, the petitioner deposed that Kargua (K) Construction was set up in 1988 by her and the deceased, and since then, the company has succeeded.

j) L.R. No. Narok/Transmara/Kimintet "C"/87

93. The property was purchased between 1991 and 2000.

k) L.R. No. Narok/Transmara/Kimintet "C"/2

94. The property is adjacent to plot C-87

l) L.R. No. 8827/9 - Thika

95. The property was purchased in 1997. The 1st respondent deposed that it is leased out to small-scale coffee farmers. The petitioner deposed that the affairs of the company Africana Timber Mills are carried out on this property.

m) **Shareholding in Kargua (K) Construction Company Ltd**

n) **Shareholding in Kargua Estates Limited**

o) **Shareholding in Africana Timber Mills**

96. With respect to the shareholding in the various companies associated with the deceased, the court notes that only the shares registered in the name of the deceased form part of the estate for purposes of succession. Under section 3 of the Law of Succession Act, the estate of a deceased person comprises the free property which the deceased was legally competent to dispose of during his lifetime. Accordingly, any shares held by the deceased in Kargua (K) Construction Company Limited, Kargua Estates Limited, Africana Timber Mills Limited, and any other company constitute part of the estate only to the extent of the shares registered in the name of the deceased. Shares held by other shareholders or directors in their individual capacities do not form part of the estate and therefore fall outside the scope of these succession proceedings.

97. Upon issuance and confirmation of the grant, the administrators shall be entitled to deal only with the deceased's shares, which shall thereafter be transmitted or distributed to the beneficiaries in accordance with the confirmed grant and the provisions of the Companies Act, 2015, governing the transmission of shares of a deceased shareholder.

98. The estate of the deceased will be distributed as follows:-

	Name	Description of Properties	Share of Heirs
1.	Mary Njeri Mburu	L.R. No. 72/866 - House No. 177, Southlands Estate, Nairobi	Absolutely
2.	Mary Njeri Mburu, Michael Matthew Guandai and Joy Anne Mumbi	L.R. No. 72/1322 - Civil Servants Estate, Nairobi	Equally
3.	Mary Njeri Mburu, Michael Matthew Guandai and Joy Anne Mumbi	L.R. No. 72/1226 - Civil Servants Estate, Nairobi	Equally
4.	Winifred Nyambura Karugu	L.R. No. 209/11332 - Nairobi West, Nairobi	Absolutely
5.	Winifred Nyambura Karugu	L.R. No. 209/11430 - Nairobi West, Nairobi	Absolutely

6.	Winifred Nyambura Karugu	L.R. No. 209/11431 - Nairobi West, Nairobi	Absolutely
7.	Mary Njeri Mburu, Michael Matthew Guandai and Joy Anne Mumbi	L.R. No. 209/11432 - Nairobi West, Nairobi	Equally
8.	Mary Njeri Mburu, Michael Matthew Guandai and Joy Anne Mumbi	L.R. No. 209/11470 - Industrial Area, Nairobi	Equally
9.	Winifred Nyambura Karugu	L.R. No. 136568/10 - Lavington, Nairobi	Absolutely
1 0	Mary Njeri Mburu, Michael Matthew Guandai	L.R.No.Narok/ Transmara/Kimintet "C"/87	Equally
1 1	Mary Njeri Mburu, Joy Anne Mumbi	L.R.No.Narok/ Transmara/Kimintet "C"/2	Equally
1 2	Winifred Nyambura Karugu	L.R. No. 8827/9 - Thika	Absolutely
1 3	Mary Njeri Mburu, Michael Matthew Guandai Joy Anne Mumbi, and Winifred Nyambura Karugu	Shareholding in Kargua (K) Construction Company Ltd	Equally
1 4	Mary Njeri Mburu, Michael Matthew	Shareholding in Kargua Estates	Equally

	Guandai Joy Anne Mumbi, and Winifred Nyambura Karugu	Limited	
1 5	Mary Njeri Mburu, Michael Matthew Guandai Joy Anne Mumbi, and Winifred Nyambura Karugu	Shareholding in Africana Timber Mills	Equally

99. In relation to the liabilities of the estate, each beneficiary shall assume responsibility for the discharge of any liabilities or obligations attached to the property allocated to them under this distribution.

Disposition

a) Winifred Nyambura Karugu and Mary Njeri Mburu are hereby appointed the administrators of the estate of the deceased.

b) A Grant of Letters of Administration Intestate shall issue to the said administrators forthwith.

c) The beneficiaries of the estate are hereby identified as Winifred Nyambura Karugu, Mary

Njeri Mburu, Michael Matthew Guandai, and Joy Anne Mumbi.

d) The assets comprising the estate are those set out in paragraphs 82-95 of this judgment.

e) The estate shall be distributed in accordance with paragraph 98 of this judgment.

f) If any other property is not covered in this distribution, it shall be divided between the two houses as follows;

1st House 41.7%

2nd House 58.3%

g) Parties to bear own costs of this suit.

Orders accordingly.

**DATED and DELIVERED at NAIROBI this 17th day of March
2026**

.....
**E.K. OGOLA
JUDGE**

In the presence of:

Mr. Koech for
the Petitioner

Mr. Mbugua holding brief Mr. Mbiji..... for
the Objectors

ORIGINAL