

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT ELDORET
PROBATE AND ADMINISTRATION CAUSE NO, 100 OF 2011

IN THE MATTER OF THE ESTATE OF PETER MUREITHI MBUGUA

JANE WANJIKU MUREITHI.....1ST PETITIONER
EUNICE NYAMWITHA MUREITHI.....2ND PETITIONER

VERSUS

ANNA WANJIRU MUREITHI.....1ST OBJECTOR
EUNICE NYAMWITHA WAWERU.....2ND OBJECTOR
JOHN MBUGUA WAWERU.....3RD OBJECTOR
JACINTA NYAMBURA MUTHEKI.....4TH OBJECTOR
PRISCILLA MARY WAMBUI MWAURA.....5TH
OBJECTOR

JUDGMENT

1. The background of this matter is that the deceased, **Peter Mureithi Mbugua**, died on 5/01/2011 at the age of 55 years old. By the Petition filed on 19/04/2011 through **Messrs Kigen & Co. Advocates**, the Petitioners, **Jane Wanjiku Mureithi** and **Eunice Nyamwitha Mureithi**, describing themselves as widow and daughter, respectively, of the deceased, applied for a Grant of Letters of Administration to manage the estate of the deceased. The Petitioners listed themselves and 3 others as the survivors of the deceased. They also listed 5 parcels of land, and 2 bank accounts as the assets comprising the estate.
 2. However, after the Petition was gazetted but before it was issued, the 5 Objectors, by their Objection dated 24/06/2011, and also a Cross-Petition, filed through **Messrs Annasi Momanyi & Co. Advocates**, filed a challenge to the Petition. They also filed an Answer to the Petition. The grounds alleged were that although the Objectors were a widow (1st Objector) and daughters of the deceased, respectively, they had been excluded or omitted from the Petition and from the list of beneficiaries, and they had also not been involved in filing of the Petition. According to them therefore, there had been concealment of material facts. They presented the 3rd Objector, **John Mbugua Waweru**, as their proposed Administrator.
 3. The Petitioners, in their Reply to Answer to the Petition, dated 12/09/2011, denied that the 1st Objector is a widow of the deceased as there is a valid Decree for divorce between the deceased and the 1st Objector. They also denied that the 2nd, 3rd and 4th Objectors are son and daughters, respectively, of the deceased, and stated that they, like the 1st Objector, are not beneficiaries of the estate as they were never maintained by the deceased prior to his death. The 1st Objector also filed the Further Affidavit she swore on 20/03/2012, in which she
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exhibited a copy of a Certificate of Marriage indicating that she got married to the deceased in church on 3/05/1980.

4. The 1st Objector then filed the Further Affidavit she swore on 30/11/2011 in which she exhibited copies of Certificates of Birth for the 2nd, 3rd and 4th Objectors indicating the deceased as their father, although she pointed out that the names of the 2nd, 3rd and 4th Objectors had been misspelled in the Certificates. She also exhibited a copy of a letter from a Chief. In the Replying Affidavit she swore on 20/09/2012, she reiterated matters she had already stated, and added that while she is the 1st widow of the deceased, the 1st Petitioner is the 2nd widow, that the Petition wrongly included some properties registered in the name of her mother-in-law, and that the Chief's letter presented by the Petitioners was from a different location.
5. In a rejoinder, the 1st Petitioner filed the Supplementary Affidavit she swore on 5/01/2012, in which she termed the Certificates of Birth exhibited by the 1st Objector as forgeries.
6. After much delay caused by filing of various interlocutory Applications, the matter was then directed to be canvassed by way of *viva voce* trial upon which the parties filed Witness Statements and documents. The Petitioners had, by this time, changed their Advocates to **Messrs Tom Mutei Advocates**. Although the parties filed a number of Witness Statements, I will only recite those made by the witnesses who actually testified at the trial as only those were adopted in evidence.

Objector's Witnesses' Statements

7. The 1st Objector, **Anna Wanjiru Mureithi**, in her Statement dated 2/10/2023, conceded that she separated from the deceased pursuant to a Court Separation Cause but insisted that they remained husband and wife until the death of the deceased, and that they got 3 children, namely, the 2nd, 3rd and 4th Objectors. She stated that the 5th Objector is her sister-in-law. She reiterated that the 2nd, 3rd, and 4th Objectors, although children of the deceased, were unjustifiably left out of the list of survivors of the deceased as presented in the Petition. She also pointed out that the Court, by its Ruling delivered on 28/09/2018 had already found the 1st - 4th Objectors to be beneficiaries of the deceased.
8. **Jacinta Nyambura**, in her Statement dated 2/10/2023, basically, reiterated the same matters advanced in the 1st Objector's (her mother) Statement.

Petitioner's Witnesses' Statements

9. The 1st Petitioner, **Jane Wanjiku Mureithi**, in her Statement dated 22/02/2021, reiterated that she got 5 children with the deceased, and that she got married to the deceased in 1986 and lived together with him until his death. She stated that they acquired the properties, **Eldoret Municipality Block 27/191, Eldoret Municipality Block 16 (Kamukunji) 388, and Eldoret Municipality Block 16 (Kamukunji) 610** during subsistence of the marriage, that they purchased the properties, **Eldoret Municipality Block 27/191, and Eldoret Municipality Block 27/99** also during subsistence of the marriage, and that **Eldoret Municipality Block 16 (Kamukunji) 388, Eldoret Municipality Block 16 (Kamukunji) 610, and Eldoret Municipality Block 16 (Kamukunji) 633** were inheritance from **Eunice Nyamwitha** by way of **Eldoret High Court Succession Cause 61 of 2008**. According to her, the 1st Objector is an ex-wife of the deceased as they parted ways under **Separation Cause No. 5 of 1998**, and a decree absolute issued. She stated further that subsequently, the 1st Objector got married to one the late “**Njogu**” with whom she got 3 other children, and upon which the custody of the children of the marriage was vested by the Court upon the 1st Objector. She also stated that after the separation, the deceased never used to maintain the Objector and that all the properties in question were acquired after the separation and/or divorce.
10. **Peter Kariuki Manguriu**, in his Statement stated that he is a brother to the 1st Petitioner. He then basically described the steps and marriage ceremonies that were conducted under the Kikuyu customary law before and during the marriage between the deceased and the 1st Petitioner, between 1986 and 1994, including dowry payment and the ***uracio*** ceremonies. The Statement was undated but at the trial, I allowed the witness to date the same, which he did in Court, and dated the Statement “2/04/2025”.

Hearing of the Objection

11. As aforesaid, the matter then proceeded for ***viva voce*** trial.

Objectors’ Witnesses’ Testimonies

12. **PW1** was the 1st Objector, **Annah Wanjiru Muriithi**. Led by **Mr. Wainaina** holding brief for **Mr. Momanyi**, she testified that the 1st Petitioner was her house-girl from the year 1983 and later became her husband’s wife. She also admitted that the 2nd Petitioner is the 1st Petitioner’s daughter, and stated that the 5th objector is a sister to the deceased. She then adopted her Witness Statement and urged that their complaint is that 3 months after the death of the deceased, they discovered that the Petitioners had filed this Succession Cause without their knowledge. She testified that she started living with the deceased in 1975 before formalizing the marriage in 1980, and also reiterated that the Court, by the Ruling delivered **Eldoret High Court Succession Cause No. 100 of 2011**

by **H. Omondi J (as she then was)**, on 28/09/2018, recognized her children as beneficiaries of the estate herein. She then produced her documents. Under cross-examination by **Ms. Moraa**, she stated that she never divorced the deceased and insisted that they only separated under a Court order and that it is the deceased who sued her alleging desertion. She however conceded that the order indicates the same as being a “*decree absolute*”, which she however described as an error, but agreed that such alleged “error” was never corrected. She insisted that she never divorced the deceased and also never re-married, and denied knowledge of the alleged “**Njogu**” whom she is alleged to have married later. She conceded that she did not produce any evidence to demonstrate that the properties, **Eldoret Municipality Block 24/91**, **Eldoret Municipality Block 16 Kamukunji/35**, and **Eldoret Municipality Block 16 (Kamukunji) 388**, form part of the estate herein as she had alleged. She then stated that **Eldoret Municipality Block 16/27** did not form part of the estate herein as it belonged to the mother to the deceased, although she agreed that the Certificate of Confirmation of Grant issued in **Eldoret High Court Succession Cause No. 61 of 2007** indicates that the deceased inherited the property from the estate of his late mother. She also conceded that she had not produced any documents to demonstrate ownership of the properties, **Eldoret Municipality block No. 16 of 633** and **Pioneer Ngeria EATEC Block 1/7021**. In respect to the motor vehicle registration number **KAZ 944C**, she stated that the log-book indicated that the owner thereof was **Jane Wanjiku** pursuant to the transfer effected on 23/04/2007.

13. PW2 was **Jacinta Nyambura**, the 4th Objector. She adopted her Witness Statement and reiterated the matters narrated in her Statement, including that she is the daughter of the 1st Objector, and the 2nd and 3rd Objectors are her siblings. In cross-examination, she stated that she was aware that her parents separated. She however insisted that the parents only separated but never divorced.

Petitioner’s Witnesses’ Testimonies

14. DW1 was **Jane Wanjiku Muriithi**, the 1st Objector. Led by **Ms. Moraa**, she, too, adopted her Witness Statement and produce her supporting documents. Under cross-examination by **Mr. Momanyi**, she agreed that she did not have a Marriage Certificate but restated that this is because she was married under the Kikuyu customary law, as can be attested by her brother, the said **Peter Kariuki Manguru (DW2)**, and also the minutes of the marriage ceremonies produced as part of her documents. She then insisted that although the decree produced to demonstrate the parting of ways between the deceased and the Objector indicates the same as a separation, it was actually a divorce. She conceded that in her Statement, she had stated that upon the divorce of the 1st Objector, the custody of the

children of the marriage was vested by the Court upon the 1st Objector. She also conceded that as regards her allegation that the 1st Objector re-married, she only heard it from “people”, and also conceded that she did not also know the names of the 3 other children she claimed the 1st Objector got after her re-marriage. She also agreed that one of the properties listed herein was acquired by the deceased from his mother’s estate as his inheritance. She also agreed that in her Advocate’s letter dated 28/03/2019, which was however not produced in evidence, the properties listed as forming the estate of the deceased were **Eldoret Municipality Block 27/99, Eldoret Municipality Block 27/91, Eldoret Municipality Block 16 Kamukunji/610, and Eldoret Municipality Block 16 (Kamukunji) 388, and Eldoret Municipality Block 16/27**. She also conceded that she had not produced any Agreements of Sale to prove her claim that the deceased and herself acquired the properties during subsistence of their marriage. Regarding the 1st Objector’s claim that the Court, by way of the Ruling delivered by **H. Omondi J (as she then was)**, on 28/09/2018, had already recognized the Objectors as rightful beneficiaries of the estate of the deceased, she denied any knowledge of such finding.

15. **DW2** was the said **Peter Kariuki Manguru**. He reiterated that he is the 1st Petitioner’s (**DW1**) elder brother, and he, too, then adopted his Witness Statement. In cross-examination, he reiterated that his sister, the 1st Petitioner, was married to the deceased in 1986 under Kikuyu customary marriage, and the required marriage ceremonies, which he attended, were conducted, and presided over by elders. Regarding the 1st Objector, he stated that he only knew her in the case herein, although he stated that he cannot recall the Master of Ceremonies or the person said to have been recognizing the widows. He also conceded that the deceased was already a mature man when he married the 1st Petitioner, but he did not know whether the deceased was already married by that time.

Written Submissions

16. Upon close of the trial, the parties filed Written Submissions. The Objectors filed the Submissions dated 6/08/2025, while the Petitioners’ is dated 15/09/2025.

Objectors’ Submissions

17. Counsel for the Objectors submitted that the Objectors have established that they are beneficiaries to the estate of the deceased being a widow and children of the deceased. Counsel asserted that there has never been a Divorce Cause but only a Separation Cause, but the subordinate Court erroneously granted a divorce in a Separation Cause, which is not permissible or untenable. He also submitted that this Court, by its Ruling delivered on

28/09/2018 by **H. Omondi J**, had already recognized the 1st Objector and her children as beneficiaries of the estate of the deceased. Regarding the 1st Petitioner, Counsel asserted no marriage took place between her and the deceased on two accounts. He urged that, first, the statutory marriage entered into between the deceased and the 1st Objector was never dissolved and the deceased therefore had no capacity to transact another marriage with the 1st Petitioner during the subsistence of the marriage with the 1st Objector, despite the separation. His second ground is that, even if the Court were to find that the Petitioner had capacity to celebrate a marriage, no marriage ceremony took place between the deceased and the 1st Petitioner since for a Kikuyu customary law marriage to subsist, all the required processes have to be proved to have taken place, including; (i) capacity to marry, (ii) consent, (iii) *ngurario*, (iv) *ruracio*, and (v) commencement of cohabitation, and in the case of the Petitioner, none took place. He cited the case of **Eva Waima Kaaka & Another v Tabitha Waithera Mararo [2018] eKLR**. On distribution, Counsel urged that there are only 8 beneficiaries to the estate and the estate ought to be distributed equally amongst these 8 beneficiaries.

Petitioners' Submissions

18. Counsel for the Petitioners submitted that it is not in issue that the 1st Objector was married to the deceased on 3/5/1980. According to her, it is also not in issue that through a **Decree Nisi** issued on 11/8/1988 in **Eldoret SRM Separation Cause No. 5 of 1985**, the marriage between the 1st Objector and the deceased was dissolved owing to the 1st Objector's desertion, and that the **Decree Nisi** was made absolute through the **Decree Absolute** issued on 29/8/1989. She urged that the fact of divorce absolute being issued in a Separation Cause was not challenged by the 1st Objector to-date, and also, the same was drawn and filed by the 1st Objector's Advocate before being endorsed by the Court. She urged that **Part III** of the **Law of Succession Act** makes provision for "**dependants**" to the estate of a deceased person, and thus, in accordance with the provisions of **Section 29** of the **Law of Succession Act**, the 1st Objector is a "**dependant**" to the estate of the deceased, as **Section 26** permits a "**dependant**" to apply to Court for "**reasonable provision**" in the estate of the deceased. Counsel also cited **Part V** of the **Law of Succession Act** which makes provision for "**intestacy**" under **Sections 35, 36, 38, 39, and 40**. She also cited **Part VII** of the **Act**, which makes provision for administration of estates, and pointed out that **Section 66** sets out the order of preference of persons to whom a Grant of Letters of Administration may be issued. She urged that under **Part V**, a surviving spouse or spouses, and child or children, have rights to inherit from the estate of a deceased person who died intestate, and under **Part VII**, a surviving spouse being the highest in the order of persons to move the Court has the right

to Petition for a Grant of Letters of Administration. She also cited **Section 3** of the **Act**, and urged that, by virtue of the **Decree Absolute** referred to earlier, the 1st Objector is not a “**surviving spouse**”, but a “**dependant**” within the meaning of **Part III** of the **Act**, and as such, her role herein is limited to seeking “**reasonable provision**” but in this case, she has not even invoked that option. According to Counsel therefore, the 1st Objector is not entitled to a share in the estate of the deceased under **Part V** of the **Act**, nor is she a person who can petition the Court for Letters of Administration.

19. Regarding the Ruling delivered herein on 28/09/2018 by **H. Omondi J**, which the 1st Objector claimed to have already recognized her and her children as beneficiaries, Counsel cited the case of **Little Hills Flora Limited & 2 Others v Industrial and Commercial Development Corporation & 2 others [2024] eKLR**, and submitted that the said Ruling by **H. Omondi J**, was made at the interlocutory stage and is thus not binding on the final finding of these Objection proceedings. She further cited the case of **FEO v ACO (Sued as Co-Administratrix of the Estate of the Late BPO) (2024)**, and also the case of **In re Estate of Fredrick Renhas Omukoko (Deceased) (Succession Cause 208 of 2006) [2025] eKLR**.
20. In respect to the 2nd - 4th Objectors, Counsel acknowledged that the 1st Objector having produced Certificates of Birth indicating that the 2nd - 4th Objectors are children of the deceased, they are entitled to be included as beneficiaries in the estate of the deceased. In respect to the 5th Objector, Counsel urged that not having testified or given any evidence in this matter, the Court should find no merit in her case. She cited the case of **Mbau Saw Mills Limited v Attorney General & another [2015] eKLR**.
21. In respect to the 1st Petitioner’s marriage to the deceased, Counsel pointed out that neither in the Objection nor Answer to Petition, did the Objectors dispute that the 1st Petitioner was a spouse of the deceased. She however observed that during cross-examination of the 1st Petitioner and in the Objectors’ Submissions, the Objectors challenged the issue of the 1st Petitioner’s marriage to the deceased. Counsel urged that parties are bound by their pleadings and cited the case of **Raila Amollo Odinga & Another v Independent Electoral and Boundaries Commission and 2 Others SCK Presidential Petition No. 1 of 2017 [2017] eKLR**. She urged that raising of this issue during trial and at the Submissions stage constituted trial by ambush intended to prejudice the Petitioners, and that the Objectors’ tactic is an attempt to amend their pleadings. She also cited the Court of Appeal case of **Abdirahman Abdi also known as Abdirahmani Mohamed Abdi vs Safi Petroleum Products Ltd & 6 others [2011] eKLR**, and also the case of **Hunker Trading Company Limited v Elf Oil Kenya Limited [2010] eKLR**. She then urged that be that as it may, **Eldoret High Court Succession Cause No. 100 of 2011**

when filing the Petition herein, the Petitioners included a Chief's letter wherein the 1st Objector was listed as the deceased's widow. She also referred to the 1st Petitioner's testimony in which she narrated the manner in which her marriage to the deceased was conducted and all the essential ingredients of a Kikuyu customary law as set out in the well-known **Eugene Cotran's** book - "**Case Law on Kenya Customary Law**" were met. She cited the case of **In re Estate of Wilfred Kihara Kariuki (deceased) [2018] eKLR**, and also the case of **In re Estate of Rosemary Wambui Kamuyu (Deceased) [2019] eKLR**.

22. Regarding the 1st Petitioner's children with the deceased, Counsel urged that it is not in dispute that the 1st Petitioner and the deceased had several children as listed in the Petition filed herein, and as corroborated in the Chief's letters accompanying the Petition, and also by Certificates of Birth produced. Regarding the list of properties forming the estate of the deceased, Counsel referred to the Objectors' contention that the Petitioners had included properties that do not belong to the deceased, that some properties listed belonged to the late **Eunice Nyamwitha**, and that the Petitioners had also left out some properties belonging to the deceased. She then pointed out that during her cross-examination, the 1st Objector confirmed that she did not have proof of existence of the other properties she claimed to have been omitted, and also still insisted that the motor vehicle registration number **KAZ 944C** belonged to the deceased even after she was shown the log-book demonstrating that the same is registered in the name of the 1st Objector. Counsel also pointed out that the 1st Objector, when shown the Certificate of Confirmation of Grant issued in **Eldoret High Court Cause No. 61 of 2007** also conceded that the title to the property, **Eldoret Municipality Block 16/(Kamukunji)/27** was inherited by the deceased from his mother's estate. She submitted that he who alleges must prove, and cited **Sections 107 and 108** of the **Evidence Act**. She also submitted that the Objectors have failed to prove the allegation that the Petitioners have failed to administer the estate faithfully.

Determination

23. In respect to the 1st Petitioner's marriage to the deceased, I agree with **Ms. Moraa**, Counsel for the Petitioners' submission that neither in the Objection nor in the Answer to Petition, did the Objectors dispute that the 1st Petitioner was a spouse of the deceased. It is however true that during cross-examination of the 1st Petitioner and in the Objectors' Submissions, the Objectors purported to challenge the 1st Petitioner's alleged marriage to the deceased. I agree with **Ms. Moraa** that parties are bound by their pleadings and the raising of new issues at the trial and/or at the Submissions stage constitutes trial by ambush which is not permitted (see, *inter alia*, the case of **Raila Amollo Odinga & Another v Independent Electoral and**

Boundaries Commission and 2 Others SCK Presidential Petition No. 1 of 2017 [2017] eKLR, and also the Court of Appeal case of *Sila v Attorney General (2025) KECA 498*

24. It is however my observation that even if the issue of the 1st Petitioner's marriage to the deceased were in issue, the 1st Petitioner, in her testimony, satisfactorily narrated and explained the manner in which her marriage to the deceased was conducted and all the essential ingredients and requirements of a valid Kikuyu customary law marriage met. This testimony was corroborated by the testimony of her brother (**DW1**). The Petitioners also exhibited the Chief's letter in which the 1st Objector is listed as the widow of the deceased.

25. The fact of the deceased being her children's father has also been satisfactorily established by way of the Certificates of Birth produced. No contradictory evidence having been presented, I am satisfied that the issue of the 1st Petitioner's marriage to the deceased, and the two having had children was proved and laid to rest. In fact, as already recounted above, the 1st Objector, in her Replying Affidavit sworn on 20/09/2012, at paragraph 10 thereof, expressly acknowledged that she is "***the 1st widow of the deceased, while the 1st Petitioner is the 2nd widow***".

26. In view thereof, the issues that remain for determination in this matter can be summed up as follows:

i) **Whether the 1st Objector was married to the deceased, and if so, whether she subsequently separated or divorced the deceased, and therefore, whether she has any claims to the estate of the deceased, whether as a wife (beneficiary) or as a former wife (dependent).**

ii) **Whether the 2nd - 4th Objectors are children of the deceased and if so, whether they have any claims to the estate of the deceased as beneficiaries or dependents.**

iii) **Whether the 5th Objector, an alleged sister to the deceased, has established any claims against the estate of the deceased.**

iv) **How should the estate be thus distributed?**

27. In cases of a deceased dying intestate as herein, **Sections 35 - 40** of the **Law of Succession Act** govern and guide the Succession of the estate of such deceased. **Section 66** then sets out the order of preference of persons to whom a Grant of Letters of Administration may be issued in such cases of intestacy. Under the above provisions, a "***surviving spouse***" or **Eldoret High Court Succession Cause No. 100 of 2011**

“*spouses*”, and “*child*” or “*children*” are the primary persons granted rights to inherit from the estate of the deceased, and a surviving spouse is given the highest preference in the order of priority of persons who may Petition the Court for a Grant of Letters of Administration.

28. In this matter, although as aforesaid, I am satisfied that the deceased married the 1st Petitioner sometime in the year 1986 under Kikuyu customary law, there is no dispute that the deceased had earlier also married the 1st Objector, and this is established by the Certificate of Marriage produced in evidence, which indicates that the church solemnization of the marriage between the deceased and the 1st Objector was conducted much earlier on 3/05/1980.
29. It is however also not in dispute that through a *Decree Nisi* given on 11/8/1988 and *Decree Absolute* given on 29/08/1989 in **Eldoret SRM Separation Cause No. 5 of 1985**, the marriage between the 1st Objector and the deceased was indicated to have been dissolved by way of divorce, owing to desertion by the 1st Objector. There is no however explanation how a Separation Cause gave rise to an order of Divorce. While therefore the Objectors contend that the matter being a Separation Cause, the order issued could only have been, and in fact, was for separation, according to the Petitioners, the *Decree Nisi* and the *Decree Absolute*, should be read literally as they appear, that is, as being orders for divorce.
30. **Justice William Musyoka**, in his book, “**The Law of Succession**” at Page 100, stated that:
- “For the purpose of the rules of intestacy, a divorced spouse has no rights to the intestate’s estate; a judicially separated spouse is, however, entitled. This applies to all legal marriages whether contracted under statute or customary law. Customary law marriages include the woman-to-woman marriage arrangements. Under Section 3(1) of the Law of Succession Act, a separated wife is considered a wife for succession purposes. The divorced spouse may make a claim under the family provisions in Section 26 of the Law of Succession Act for reasonable provision from the estate. The definition in Section 29 of a dependant for the purpose of Section 26 includes a former wife or former wives recognized as such and protected under Section 3(5) of the Law of Succession Act.”**
31. One curious point I notice is that both the **Decree Nisi** and the **Decree Absolute**, though issued on different dates, indicate on the face thereof, that they were “*drawn and filed*” by the Advocates acting for the 1st Objector in the Separation Cause, namely, **Anassi & Co. Advocates**. This, incidentally, is basically the same firm of Advocates presently representing the Objectors in this instant Succession Cause, but now operating under the name and style of **Anassi Momanyi & Co. Advocates**. My understanding is that the Advocates, having
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drawn the draft **Decree Nisi**, presented it to the Court, which, upon scrutinizing it and satisfying itself that it was drafted in accordance with the Judgment delivered, endorsed the same and formally issued it as the order of the Court dated 17/08/1988. One year later, the 1st Objector's Advocates, again, drew the draft **Decree Absolute** and presented it to the Court, which, upon satisfying itself that it was well drafted, similarly, again, endorsed it and formally issued it as the order of the Court dated 29/08/1989. If, as urged by the Objector's Counsel, issuance of the order for Divorce in the Separation Cause was a mere typographical error, is it the case that the Court, too, did not notice the error and correct it? Assuming that indeed, the **Decree Nisi** contained the error as alleged, does it mean that the 1st Objector's Advocates, again, one year later repeated the same mistake, which, the Court, again, did not also notice and correct?

32. It is also curious that the 1st Objector's Advocates have, to date, never moved to ask for the alleged "error", if any, to be corrected, and, in their wisdom, chose to go to trial with the "error" still intact. The Objection herein having been filed in the year 2011, the Objectors clearly have had ample time to apply for the correction, if any. As aforesaid, the 1st Objector's Advocates in the Separation Cause were basically the same Advocates now representing the Objectors herein. They could have therefore either supplied copies of the pleadings filed in the Separation Cause and/or the Judgment, or better still, they could have applied for the Separation Cause Court file to be produced in this matter for scrutiny and verification by the Court. They did none of this and, as such, have left me with serious doubts over legitimacy of their claim that issuance of the order for Divorce in the Separation Cause was really an error. It is not for this Court to speculate on what could have transpired at the Separation Cause such that an order Divorce was issued, but it is difficult for this Court to readily accept the Objectors' explanation when no basis whatsoever has been laid to support that explanation.

33. I agree, it is indeed strange that the order of Divorce was issued in a Separation Cause. However, without the Objectors bothering to lay any basis for the explanation they gave, I choose to read the **Decree Nisi** and the **Decree Absolute** exactly as they are, that is, as dissolving the marriage between the deceased and the 1st Objector. While the contents of the orders may as well have been an error, in the unique circumstances of this case, the Objectors having chosen to go to the trial with the alleged "error" still intact, and the 1st Objector not having, to date, bothered to take any steps to cause the alleged "error" to be corrected or set aside, the **Decree Nisi** and the **Decree Absolute** remain intact, and can only therefore be read literally as drawn, and, as such, they remain valid declarations of the Court.

34. In view of the foregoing, my answer to the 1st issue for determination is therefore that, while the 1st Objector indeed got married to the deceased, which marriage was solemnized in church in the year 1980, that marriage is indicated to have been subsequently declared by a Court of law on 29/08/1989 to have been dissolved when that Court issued a final order of Divorce (**Decree Absolute**). The 1st Objector is therefore not a “*surviving spouse*” within the meaning contemplated under **Section 3** of the **Law of Succession Act** but a “*former wife*”.

35. Having found as above, my holding is that the 1st Objector is not entitled to a share in the estate of the deceased as a “*beneficiary*”, nor is she a person with a higher priority in petitioning the Court for Letters of Administration. As correctly urged by the Petitioners’ Counsel, **Ms. Moraa**, the 1st Objector can only approach the Court as a “*former wife*” under the provisions of **Part III** of the **Law of Succession Act**, which makes provision for “*dependants*” to the estate of a deceased person. This is in accordance with the provisions of **Section 29** of the **Act**, under which the 1st Objector is eligible to invoke as a “*dependant*” to the estate, and **Section 26**, which permits a “*dependant*” to apply to the Court for “*reasonable provision*” in the estate. Although the 1st Objector did not invoke these provisions, I find no impediment for the Court to consider her as such, and grant her “*reasonable provision*” in the estate.

36. Regarding the Ruling delivered herein on 28/09/2018 by **H. Omondi J (as she then was)**, which the 1st Objector claimed to have already recognized her as a widow, the Judge made the following statement:

“The 1st Objector is the deceased’s widow while her co-objectors are her children with the deceased. In the absence of anything to the contrary, I accept the birth certificates which indicate her co-objectors as their offspring and therefore beneficiaries. There is also a letter from chief of KIBULENY Location which has listed the Objector and her children as the 1st house, and the 1st Petitioner as the 2nd wife,”

37. As correctly argued by **Ms. Moraa**, the above statement was made at an interlocutory Ruling before the full trial of the case was reached, and was specifically in respect to an Application seeking determination on entitlement to collect rent pending trial of the Cause.

There is nothing to indicate that the issue whether the 1st Objector was a “*surviving spouse*”

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or “*former wife*” of the deceased was canvassed at that stage. Indeed, the extensive manner in which both sides dealt at the trial with the issue whether the 1st Objector was a “*surviving spouse*” or “*former wife*” of the deceased is sufficient proof that they both appreciated that the issue was still very much alive at the trial. It would therefore be a clear injustice to apply that interlocutory statement by the Judge against the Petitioners as a binding declaration of the Court. In my view it was not (see **Uhuru Highway Development Limited vs. Central Bank of Kenya & 2 others [1996] eKLR**).

38. In respect to the 2nd - 4th Objectors, Counsel for the Petitioners acknowledged that having produced Certificates of Birth indicating that they are children of the deceased, they are entitled to be included, as beneficiaries in the estate of the deceased. I agree.

39. In respect to the 5th Objector, an alleged sister to the deceased, Counsel for the Petitioners urged that not having testified or given any evidence at the trial of this matter, the Court should find no merit in her case. I again agree. Indeed, being an alleged sister, and not a wife or child of the deceased, no basis was laid on her entitlement to inherit from the deceased.

40. Regarding the list of properties forming the estate of the deceased, the Objectors’ contended that the Petitioners had included properties that do not belong to the deceased, and left out some properties belonging to the deceased. During her cross-examination however, the 1st Objector confirmed that she had not produced any proof of existence of the other properties she alleged to have been omitted or that some of those included did not belong to the deceased. Her allegation that the motor vehicle registration number **KAZ 944C** belonged to the deceased was also shattered by production of the log-book which indicates that the same is registered in the name of the 1st Objector. The Objectors therefore failed to prove their allegations as required under **Sections 107 and 108** of the **Evidence Act**.

41. For the above reasons, I am satisfied that the list of properties/assets presented by the Petitioners as forming the estate of the deceased is correct, and I so adopt it. I may also mention that a perusal of the copies of title deeds and search reports presented indicates that the parcels of land listed were acquired long after the divorce order issued on 29/08/1989.

Final Orders

42. In conclusion, I rule and order as follows:

- a) The marriage between the deceased and the 1st Objector is indicated to have been declared by a Court of law on 29/08/1989 to have been dissolved when that Court issued a final order of divorce (**Decree Absolute**). Pursuant thereto, the 1st Objector is not a “*surviving spouse*” and is thus not eligible to inherit from the estate of the deceased as a “*beneficiary*”. She is however entitled to a “*reasonable provision*” as a “*former wife*”.
- b) The 1st Objector’s children are however declared to be beneficiaries of the estate of the deceased entitled to inherit, there being evidence, and there being no challenge, that they are the children of the deceased with the 1st Objector. The full list of the beneficiaries of the estate of the deceased is therefore declared to be as follows:

Family of 1 st Objector		Family of 1 st Petitioner	
i)	Eunice Nyamwitha Wanjiru (2 nd Objector)	i)	Jane Wanjiku Mureithi (1 st Petitioner)
ii)	John Mbugua Waweru (3 rd Objector)	ii)	Eunice Nyamwitha Mureithi (2 nd Petitioner)
iii)	Jacinta Nyambura Mutheki (4 th Objector)	iii)	Mary Wambui
		iv)	Sarah Nyakaboi
		iv)	John Mangoria

- c) The list of proven and/or currently known properties forming the estate of the deceased as at present, is declared to be as follows:

i)	Eldoret Municipality Block 27/191
ii)	Eldoret Municipality Block 27/99
iii)	Eldoret Municipality Block 16(Kamukunji)/610
iv)	Eldoret Municipality Block 16(Kamukunji)/388
v)	Account at Family Bank Eldoret Branch No. 85851075101974
vi)	Account at Equity Bank Eldoret Branch No. 030019012153

- d) Since however the copies of title documents produced in evidence are either incomplete or not fully legible, or too old, and the values of the respective parcels

land has also not been given, and the bank accounts listed above are also not supported by statements to enable the Court ascertain the current balances held therein, the Petitioner is directed to procure and file in Court, within a period of **forty-five (45) days**, recent land search reports for the parcels of land, bank statements for the accounts listed above, and valuation reports for the parcels of land. The Petitioners' costs for procuring the above items shall be reimbursed from the estate.

- e) For purposes of procuring and filing of the statements for said two bank accounts mentioned above, the Eldoret Branch Managers, or any other bank official in-charge of the Branch in which the accounts mentioned above are held, are hereby directed and/or ordered to forthwith release to the 1st Petitioner, namely, **Jane Wanjiku Mureithi**, latest statements for the two accounts indicating the current balances held therein. For avoidance of doubt, the bank accounts and Branch Managers referred to are the following:

i)	Account at Family Bank Limited, Eldoret Branch No. 85851075101974
ii)	Account at Equity Bank Limited, Eldoret Branch No. 030019012153

- f) Once the above items are procured and filed, the Court shall upon consideration thereof, distribute the estate amongst the eight (8) beneficiaries listed above, and also determine and give a "**reasonable provision**" to the 1st Objector as a "**former wife**", and also direct on the manner in which the Petitioner shall be reimbursed the costs they shall have incurred in procuring the above items.
- g) In the meantime, the following are appointed to be joint Administrators of the estate of the deceased:

Family of 1st Objector	Family of 1st Petitioner
John Mbugua Waweru (3 rd Objector)	Jane Wanjiku Mureithi (1 st Petitioner)

- h) As this is a family matter, each party shall bear his/her own costs of these proceedings.

DELIVERED, DATED AND SIGNED AT ELDORET THIS 18TH DAY OF MARCH 2026

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**WANANDA JOHN R. ANURO
JUDGE**

Delivered in the presence of:

Mr. Wainaina for the Objectors

Ms. Moraa for the Petitioners

Court Assistant: Brian Kimathi