



REPUBLIC OF KENYA



**In re Estate of Njeri Karanja (Deceased) (Civil Appeal 317 of 2019)
[2026] KECA 665 (KLR) (25 March 2026) (Judgment)**

Neutral citation: [2026] KECA 665 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CIVIL APPEAL 317 OF 2019
S OLE KANTAI, JW LESSIT & A ALI-ARONI, JJA
MARCH 25, 2026**

BETWEEN

MONICAH NJERI MWANGI APPELLANT

AND

PETER KARANJA MWANGI RESPONDENT

*(Being an appeal against the Judgment of the High Court of Kenya at Nyeri
(Ngaah, J.) delivered on 8th March 2019 in Succession Cause No. 742 of 2011)*

JUDGMENT

1. This matter has been ongoing for decades due to a protracted litigation surrounding the succession of the Estate of Njeri Karanja(Njeri). What started as a succession case evolved into a legal battle rooted in the nuances of customary practices, particularly the institution of woman-to-woman marriages recognised under Kikuyu customary law. The trial court found in favour of the respondent, a child born of a woman-to-woman customary marriage, which aggrieved the appellant, who has appealed to this Court.
2. This being a first appeal, it is our duty, in addition to considering submissions by the appellant and the respondent, to examine, analyse and evaluate the evidence on record afresh and arrive at our own independent conclusion in the matter. This approach was adopted in Kenya Ports Authority vs. Kuston (Kenya) Limited [2009] 2EA 212, wherein the Court held inter alia that:

“On a first appeal from the High Court, the Court of Appeal should reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in that respect. Secondly that the responsibility of the court is to rule on the evidence on record and not to introduce extraneous matters not dealt with by the parties in the evidence.”



3. In order to appraise ourselves with the matter, we shall briefly revisit the facts of the case.

The record shows that, following the death of Njeri on 9th December 1999, Mary Wambui Mwangi (Mary) petitioned the Muranga SPM's Court for a grant of letters of administration as the deceased's wife. The matter was later transferred to the High Court. On the list of survivors, she gave the names of the following persons:

- a. Mary Wambui Mwangi - Wife
- b. Monica Njeri Mwangi - Wife
- c. John Kamande Ngugi - Buyer
- d. Erastus Mwaura Ndungu - Buyer
- e. Joseph Kamande Mwangi - Son
- f. Lydia Wanjiku Mwangi - Wife

The estate of Njeri comprised only one asset, the land known as Loc. 7/Ichagaki/645.

4. The petition above was supported by a letter from the area chief dated 6th December 1999, which listed the beneficiaries and how the land should be distributed by consent.
5. On 20th February 2001, a grant of letters of administration was issued to Mary and. On 21st May 2001, Mary filed a summons seeking confirmation of the grant.
6. Two individuals, Moses Mwangi Gitau and Muiruri Kimani, swore an affidavit dated 12th June 2000 stating that they had bought 0.6 acres and 0.4 acres respectively from Lydia and sought to be included in the list of beneficiaries.
7. By an affidavit dated 20th June 2001, Peter Karanja Mwangi (the respondent) protested against the confirmation, stating that some beneficiaries/dependants of the deceased had been left out. Himself, John Kanyutu and Josephine Wambui Mwangi. He further stated that Monica Njeri was not the deceased's wife. He also claimed that the named buyers had no interest in the suit property, contrary to the allegations. He further stated that Monica Njeri (the appellant) had inherited land from Kanuthu Karanja (Kanuthu), the deceased co-wife. He proposed that the property be equally divided between six persons, namely; -
 1. Mary Wambui Mwangi
 2. Lydia Wanjiku
 3. Joseph Kamande
 4. Peter Karanja Mwangi
 5. John Kanyutu Mwangi and,
 6. Josephine Wambui Mwangi
8. John Kanyutu Mwangi(Kanyutu) also filed a protest dated 26th June 2001, which was in consonance with the one filed by Peter Karanja Mwangi.
9. As fate would have it, Lydia Wanjiku(Lydia), named as the wife of the deceased, died in 2004, and Mary died in 2006. Although the summons for confirmation of grant filed by Mary was still subsisting and pending, the appellant, Monica Njeri Mwangi, who described herself as many things: a wife of Njeri;



a stepdaughter of Njeri, and a wife of Kanuthu, filed another summons for the confirmation of grant, dated 18th August 2010, seeking to substitute Mary Wambui, then deceased, with herself. She identified survivors of the estate as:

1. Mary Wambui Mwangi (deceased)
2. Monica Njeri Mwangi
3. John Nyutu Mwangi
4. Joseph Kamande Mwangi
5. Lydia Wanjiku Mwangi

She also proposed that the estate be distributed, with the lion's share of 5.5 acres given to her, and the remainder, about 5.5 acres, shared equally among the other survivors.

10. Peter Karanja and John Kanyutu filed affidavits in protest of the summons of confirmation of the grant filed by Monica. In his affidavit, sworn on 30th September 2010, John Kanyutu stated that he was the grandson of the deceased, who only had two daughters-in-law: Lydia Wanjiku Mwangi and Mary Wambui Mwangi. He noted that Lydia was survived by Josephine Wambui, Peter Karanja, John Kanyutu Mwangi, Mercy Wangui Wanyoike and Mary Mbaire Maina. Mary Wambui Mwangi was survived by Wairimu Mburu, Wangui Kamande, Wanjiru and Joseph Kamande. He asserted that the deceased had already devolved her assets before her death and that the assets were distributed at Kigumo Land Control Board on 13th December 1988 as follows:

Peter Karanja - 3.3 acres

Joseph Kamande - 3.3 acres

John Kanyutu - 3.3 acres

11. Further, he contended that the appellant was not the wife of the deceased but the wife of Ngugi Munyoike. He asserted that the appellant was neither a member of his family nor a dependent of the deceased. Furthermore, he claimed that the appellant was being used by John Kamande Ngugi to grab their land.
12. At the initial hearing of the matter, the court directed that the matter was to proceed by way of affidavit evidence and submissions. Upon consideration, Seron J., in what is titled a judgment but appears to have been a ruling, ordered that the matter be stayed, subject to the appeal, so that Monica could establish her claim to the one acre she alleged was amalgamated in a civil suit.
13. Following the defeat of Monica's claim in the Chief Magistrate's Court, the respondent filed another summons seeking confirmation of the grant dated 1st October 2015. He proposed to have the estate shared among three beneficiaries as follows: Peter Karanja - 3.3 acres Joseph Kamande - 3.3 acres John Kanyutu - 3.3 acres
14. After Monica's fate in the civil court, the respondent filed a summons for confirmation of the grant dated 1st October 2015. He identified the dependants of the deceased as; Josephine Wambui Mwangi-daughter Peter Karanja Mwangi –son John Kanyutu Mwangi-son Mercy Wangui Nyoike-daughter Mary Mbaire Maina- daughter Wairimu Mburu – daughter Wangui Kamande-daughter (deceased) Loseta Wanjiru-daughter Joseph Kamande Mwangi-son



15. Further, he stated that the shares of those entitled to the estate were ascertained and those entitled to the estate were determined as follows; Peter Karanja - 3.3 acres Joseph Kamande - 3 acres John Kanyutu - 3.3 acres
16. The appellant filed an affidavit of protest sworn on 8th May 2017, against the respondent's application. The appellant accused the respondent of misleading the court by claiming to be the administrator of the deceased's estate. This time she proposed that the estate be distributed as follows: Monica Njeri Mwangi - 3 acres Joseph Kamande Mwangi - 3 acres Peter Karanja Mwangi and John Kanyutu Mwangi - 3 acres John Kamande Ngugi - 1 acre
17. The respondent replied to the affidavit in protest with an affidavit sworn on 11th May 2018. In this affidavit, he stated that though the appellant represented herself as the deceased's wife, this was not reflected in the letter written by the chief, her son. The respondent acknowledged that Kanuthu was a co-wife of Njeri Karanja but stated that the appellant could not have been married to Kanuthu, as she was the wife of Ngugi Munyoike, who sired Peter Kamande Mwangi, who later became a chief.
18. Furthermore, the respondent contended that the letters of introduction from the chief clearly indicated that the deceased had two wives, Lydia Wanjiku and Mary Wambui.
19. At the hearing before Ng'aaah J., the matter proceeded by way of viva voce evidence. In her evidence, the appellant initially testified that the deceased was her mother-in-law. She went further to state that she was married to Kanuthu, who was a co-wife to Njeri. She explained that in Karanja's household, there was no male child, so the wives married again after their husbands' deaths. She married Kanuthu Wanjiru, and Mary Wambui, who was initially the petitioner, married Njeri Karanja. She acknowledged that the respondent was the son of Lydia Wanjiku, but stated that Lydia lived at Njeri Karanja's home, and was not married to her. She was uncertain about the identity of the respondent's father. She based her claim on the fact that she was married in Karanja's home. On cross-examination, though, she stated that Lydia was married to Njeri. She also confirmed that Njeri had shared her property before she died and claimed that she had been given a portion.
20. On his part, the respondent affirmed that his mother, Lydia, was married to Njeri and that he was born in Njeri Karanja's home. His siblings were Josephine Wangui, Mary Mbaire, Mercy Wangui, John Kanyutu and John Kamande.
21. In its judgment, the court observed several irregularities in the summons filed by the parties. The judge competently dealt with the convoluted matter, and in the end, he found that the only summons for confirmation of the deceased estate duly before the court for consideration was the one dated 18th August 2010, filed by the appellant.
22. In its determination, the court found the appellant's evidence on her claim to the estate was not only contradictory, but it was also insufficient and unclear. The court concluded that the appellant had failed to prove her claim in the estate of Njeri to the required standard. Furthermore, the court observed that there was a claim that the appellant was married to someone else and had no legitimate connection to the deceased, thus disqualifying her from claiming from the estate.
23. The court allowed the respondent's protest, directing that the deceased's estate, Title No. Loc. 7/ Ichagaki/645, be shared equally among the following beneficiaries who were sired by Njeri's wives, namely; - Josephine Wambui Peter Karanja John Kanyutu Mwangi Mercy Wangui Wanyoike Mary Mbaire Maina Wairimu Mburu Wangui Kamande Wanjiru, and Joseph Kamande
24. Aggrieved by the judgment, the appellant raised nine grounds of appeal in her memorandum of appeal dated 10th December 2019. The grounds are that: the learned Judge erred in law; by confirming the



grant of letters of administration in favour of the respondent; by finding that the respondent was a beneficiary of the deceased's estate, contrary to section 29 of the [Law of Succession Act](#); determining that the appellant was not entitled to a share of the suit property; misdirecting itself by labeling the appellant as a busybody in the estate of the deceased; failing to recognize that John Kamande should receive one acre, as he was a legitimate purchaser; disregarding the evidence put forth by the appellant against established legal principles; and reaching a decision that was contrary to the weight of the evidence on record, therefore, seeking that the appeal be allowed, the judgment of the High Court be overturned, and a judgment confirming the grant issued to the appellant, as outlined in her affidavit of protest dated 8th May 2017, be issued.

25. Learned counsel for the appellant has filed submissions dated 1st August 2023 and argues that the court erred in finding that the respondent was a beneficiary in contravention of section 29 of the [Law of Succession Act](#), as the respondent unequivocally stated in his evidence that he was not a son of the deceased. Further counsel submits that the grant should be confirmed to someone rightly identified as a legal claimant of the estate of the deceased. Furthermore, the applicant stated in her evidence-in-chief that the deceased had expressed her wishes and shown them where to live.
26. Counsel contends that the [Law of Succession Act](#) aims to protect married wives under customary law, including special contract marriages such as woman-to-woman marriage recognized in Kikuyu tradition and in support relies on section 3(5) of the [Law of Succession Act](#), which states that wives married customarily can still be regarded as wives for succession purposes, regardless of the provisions of the [Marriage Act](#).
27. Counsel asserts that the trial Judge completely ignored the evidence presented by the appellant and her witness, which evidence was not contradicted by the respondent. The appellant proved her case by a preponderance of the evidence, and thus, the orders sought should not have been granted.
28. In opposition, learned counsel for the respondent filed submissions and a list of authorities, both dated 27th March 2025. Counsel opines that the sole issue for determination is whether the appellant had the locus standi to pursue this matter and argues that the appellant lacks the right to file an application on behalf of the deceased without having been granted letters of administration intestate. In support, he relies on Ibrahim vs. Hassan & Charles Kimenyi Macharia [2019] eKLR, where the court observed that 'locus standi' is fundamentally the right to appear or be heard in court or other proceedings and if a party alleges that it lacks locus standi in court proceedings, it implies that the party cannot be heard.
29. Learned counsel further submits that the area chief of Ichagaki Location, who is the appellant's son, issued a letter on 1st September 2009, substituting Mary with the appellant, despite the appellant not being entitled to benefit from the estate of Njeri. Further, in her affidavit dated 18th August 2010, the appellant claimed to be one of the deceased's wives, contradicting the chief's letter that indicated the deceased had two wives.
30. Counsel also submits that the appellant did not prove her entitlement to the estate, as simply claiming a family relation is insufficient, as seen in Re Estate of Alfred Mutune Munyao (Deceased) 2019 eKLR, where the court held that a relation claimed must be proved.
31. Counsel further contends that the respondent established through documented evidence that the appellant is not the deceased's wife but is the wife of Ngugi Munyoike, with whom she has a son who is the chief of Ichagaki Location and that therefore, the appellant has no beneficial interest in the estate of the deceased Njeri.
32. Having considered the evidence on record, submissions by the rival parties, cases cited, and the law, we are of the view that three issues stand out for our consideration, namely:



- i. Who inherits a deceased person in a woman- woman relationship under the Kikuyu Customary Law;
 - ii. Who are the beneficiaries of Njeri's (deceased) estate?
 - iii. How is the estate to be divided?
33. The undisputed facts of the case are that the deceased herein, Njeri, was the wife of Karanja Mwangi (Mwangi) and she had a co-wife, Kanuthu. By the time of his death, Mwangi had no sons, and, in line with a common practice among the Kikuyus at the time, the wives decided to marry other women to sire sons for their family. The deceased, Njeri, married two women, Lydia and Mary.
34. The two wives of Njeri sired several children as follows:
- Lydia
- Mary
1. Josephine Wambui
 2. Peter Karanja
 3. John Kanyutu Mwangi
 4. Mercy Wangui Wanyoike
 5. Mary Mbarire Maina
 1. Wirimu Mburu
 2. Wangui Kamande
 3. Wanjiru
 4. Joseph Kamande.
35. What comes out of the convoluted evidence by the appellant is that she was married to Njeri's co-wife Kanuthu, but did not inherit from her due to family squabbles, and as a wife to Njeri's co-wife, she should inherit land from Njeri's estate, since she is part of the family.
36. The concept of woman-to-woman marriage was a traditional method whose primary object was the preservation of family and property. Older women (husbands) normally past bearing age would marry younger women(wives), and children sired by the "wife" were considered the family's children. This Court in *Eliud Maina Mwangi vs. Margaret Wanjiru Gachangi* [2013] eKLR, stated; -
- “Specifically on the woman-to-woman marriage, Dr Cotran has rendered its rationale and essentials under Kikuyu customary law as follows:
- “Where a husband dies leaving a childless widow, who is past childbearing age, the widow may marry a wife. The widow pays ruracio to the family of the woman selected, and arranges for a man from her deceased husband's age set to have intercourse with her. Children resulting from such intercourse are regarded as the children of the widow's deceased husband. Modern development: This form of union is now very rare.”
- See Restatement of African Law, *supra*, page 13.”



37. In this case, there was evidence that Njeri was in a woman-to-woman relationship with two wives under the Kikuyu custom, and so was her co-wife Kanuthu. Therefore, marriage is a non-issue; as such, we shall not dwell on the same since it does not arise, but just to mention that courts have dealt with the issue before and found that such marriages are recognised under *the Constitution* and the *Law of Succession Act*. The case before us squarely falls within that realm of such customary law.

Article 11(1) of *the Constitution* states that *the Constitution* recognises culture as the foundation of the nation and as the cumulative civilisation of the Kenyan people and nation.

Section 3(5) of the *Law of Succession Act* does recognise the institution of marriage under customary law. This fact was not in issue either. In *Monica Jesang Katam vs. Jackson Chepkwony & Another* [2011] eKLR, Prof Ojwang J. (as he then was), in a case dealing with a woman-to-woman marriage observed that:

“Indeed, contemporary social systems, for instance, in the shape of current practices in the domain of family among the Nandi, are, I think, to be regarded as aspects of culture which will rightly claim protection under Article 11(1) of *the Constitution* of Kenya, 2010, which thus provides:

“*The Constitution* recognizes culture as the foundation of the nation and as the cumulative civilization of the Kenyan people and nation”.

38. This Court, in a case where the claim of woman-woman marriage was in issue, *Eliud Maina Mwangi vs. Margaret Wanjiru Gachangi* (supra), this Court stated inter alia:

“Lastly, Rule 64 of the Probate and Administration Rules makes provision for the application of African Customary Law in the following terms:

“Where during the hearing of any cause or matter any party desires to provide evidence as to the application or effect of African customary law he may do so by the production of oral evidence or by reference to any recognized treatise or other publication dealing with the subject, notwithstanding that the author or writer thereof shall be living and shall not be available for cross-examination.”

39. Section 29 of the *Law of Succession Act* defines dependants of a deceased 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.

40. The appellant did not seem to have a problem with the other children of Lydia or even Mary, save for the appellant, though all acknowledged him as being of Lydia's lineage. Even if he is a grandson of Njeri, as he described himself, though in some pleadings he refers to himself as a son, he was more entitled than the appellant, who belongs to Kanuthu's family tree. The property in question was not



a property of Njeri and Kanuthu’s husband. Indeed, there is an acknowledgement that Kanuthu left behind a property, so that if indeed the appellant was a “wife” of Kanuthu, that is where she ought to inherit. Njeri’s property ought to be listed by her family as outlined in the respondent’s affidavit.

41. The appellant laid claim because, as she alleged, her portion was amalgamated with Njeri’s land. The High Court suit was stayed to allow her to prove her claim. The suit was dismissed.
42. As for those who claimed to have bought the property, the alleged buyers simply filed affidavits seeking to be included as beneficiaries and did not present evidence in support of their claim. It is not clear whether John Kamande, named in the memorandum of appeal as a buyer, is the same as Joseph Kamande, named as a beneficiary. If he is different, he never filed any pleadings. The case proceeded by way of *vivo voce* evidence. It is expected that the alleged buyers would have followed up on their claim by presenting their evidence to the court and being cross-examined. They did not do so, and the trial Judge cannot be faulted for failing to consider the claims.
43. In the end, we find that the trial Judge was correct in his findings, which we are in total agreement with.
44. The appeal is therefore dismissed with costs to the respondent.

DATED AND DELIVERED AT NYERI THIS 25TH DAY OF MARCH, 2026.

S. ole KANTAI

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JUDGE OF APPEAL

J. LESIIT

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JUDGE OF APPEAL ALI-ARONI

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JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

