

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

HIGH COURT SUCCESSION CAUSE NO. 242 OF 2011

IN THE MATTER OF THE ESTATE OF JOSEPH MWANGI

WANJOHI (DECEASED)

GLADYS NJERI MURIUKI.....APPLICANT/OBJECTOR

VERSUS

FLORENCE WANGUI MWANGI.....

RESPONDENT

JUDGEMENT

1. Before this Court for determination is the Summons for revocation of Grant dated **5th January 2023** by which the Objector/Applicant **GLADYS NJERI MURIUKI** seeks the following orders:-

“1. SPENT.

2. THAT the temporary Grant herein and the Grant confirmed on 13th September, 2016 vide Succession No. 242 of 2011 be revoked and/or annulled.

3. THAT this Honourable Court be pleased to compel the

Petitioner to render a true, proper and comprehensive account of their administration of the Estate with respect to the funds withdrawn from Equity Bank, Account Number 00401101349285 and spent by herself from the date of their appointment up to date.

4. THAT the Honourable Court be pleased to order the

Petitioner to produce or avail in court Bank Statements in respect of the Deceased's bank account (Equity Bank, Account Number 00401101349285) from the date of appointment to date.

5. THAT should there be a finding of misappropriation of

the account mentioned above, the Petitioner be ordered

to reimburse the same to the estate of the Deceased.

6. THAT costs of the Application be provided for.”

2. The Summons was premised upon **Sections 44 and 74 of the Probate**

and Administration Rules, Section 3(2) and 76 of the Law of

Succession Act, Sections 3, 3A and 63 (e) of the Civil Procedure

Act Cap 21 Laws of Kenya, Article 159 (2) (d) of the Constitution

of Kenya 2010 and all other enabling provisions of law and was

supported by the affidavit of even date sworn by the Applicant.

3. The Respondent **FLORENCE WANGUI MWANGI** opposed the application through her replying affidavit dated **11th March 2022**. The Protest was heard by way of oral evidence in open court.

BACKGROUND

4. This succession cause relates to the estate of the late **JOSEPH MWANGI**

WANJOHI (hereinafter 'the Deceased') who died intestate on **13th June**

2010. A copy of the death certificate Serial Number **292348** is annexed

to the Petition for Grant of Letters of Administration Intestate dated **2nd**

March 2011.

5. Following the demise of the Deceased the Petitioner/Respondent **Florence Wangui Mwangi** in her capacity as a widow of Deceased sought and obtained Grant of letters of Administration which Grant was issued to her on **9th January 2012.** That Grant was duly confirmed on **13th December 2016.**

6. The Objector now seeks revocation of that Grant on the basis that the same was obtained fraudulently by concealing material facts. That the same was obtained secretly without her involvement and/or consent. On her part the

Respondent vehemently denies the allegation that she obtained the Grant fraudulently.

THE EVIDENCE

7. The objector **Gladys Njeri Muriuki** told the Court that she was the

second wife of the Deceased having been married to the Deceased on

2nd February 1994 under Kikuyu Customary Law. The objector stated

that when the Deceased passed away it was she who took his body to

the mortuary - the objector further states that the Deceased was in fact

buried on her portion of the land which supports her claim that she was

a wife.

8. The objector alleges that following the demise of the Deceased the

Respondent moved to court secretly and obtained the Grant without

disclosing the existence of herself as a wife of the Deceased and her children despite the fact that the Respondent was all along fully aware of her existence as a wife of the Deceased.

9. The objector complains that the Respondent left her totally in the dark

and failed to involve her in this succession cause or to name her as a

dependant and beneficiary of the estate of the Deceased despite the fact

that the two women lived in the same parcel of land though in separate

compounds. That her consent was neither sought nor obtained as

required by law yet the objector has never renounced/waived her right of

entitlement to the estate.

10. The Objector claims that prior to his demise she and the Deceased

opened a joint bank account at **Equity Bank**. That upon following up she was surprised to learn that the monies in that joint account had been withdrawn by the Respondent on the strength of the confirmed grant. The Objector reported the matter to the police and that it was only upon making this report that the police revealed to her the existence of this succession cause. Finally the objector prays that the Grant which was issued to the Respondent be revoked and that she and her children be included as beneficiaries to the estate.

11. **PW2 EUNICE MUTHONI** told the court that she and her late husband

were family friends to the Deceased. **PW2** states that she knew the

Deceased as a polygamous man who had two (2) wives. That the two

wives both lived in the same parcel of land but each had her own

compound.

12. According to **PW2** the 1st wife Florence left the matrimonial home in

the year **1992**. That the church then permitted the Deceased to

take a 2nd wife. **PW2** states that she was present and accompanied the Deceased and other church members to the home of the objector where the dowry was paid. **PW2** confirms that the Deceased was buried in the home of the objector.

13. **PW3 WACHIRA wa KANGARA** told the court that he knew the

Deceased very well as a friend. **PW3** stated that he knew the

Deceased as a polygamous man who had two (2) wives namely **Gladys**

and **Florence**. **PW3** confirmed that the two wives of the Deceased

lived on the same parcel of land with each having their own home

thereon.

14. The Respondent **Florence Wangui** testified as **DW1**. She told the

court that the Deceased was her husband and that the two got married in the year **1969**. That the couple bore nine (9) children together. The Respondent told the court that she was not aware that the Deceased had another wife. However she states that after a fall out with the Deceased she left the matrimonial home in the year **1992**. That upon returning in the year **2000** she found the objector living with the Deceased in her house. That well-wishers then built the Respondent another house. The Respondent admits that she and the objector lived on the same parcel of land but each had their own compound.

15. The Respondent further admitted that she did obtain letters of

Administration in respect of the estate of the Deceased which Grant was later confirmed in her favour. The Respondent further admits that she did withdraw the funds from **Equity Bank** based on an order from **Kerugoya Court** and that she did not share the money with the objector as in

her view the money belonged to her solely since she held the Grant.

16. **DW2 MARY MUTHONI** is the daughter of the Respondent and the

Deceased. Although **DW2** admits that she saw the objector come to live with the Deceased in the family home she states that the particular farm belonged to her mother Florence and insists that the Deceased had stated that he would settle the objector elsewhere.

17. **DW2** confirms that she accompanied her mother to court to file the

petition for Grant and confirms that they did not include the objector in the succession cause. According to the witness the monies held in the bank account belonged to the Deceased and the Respondent only.

18. At the close of oral evidence parties were invited to file written

submissions. The Objector filed the written submissions dated

13th October 2025 whilst the Respondent did not file any submissions.

ANALYSIS AND DETERMINATION

19. I have carefully considered the Affidavit of Protest dated **5th January**

2023, the reply filed thereto, the evidence adduced by the parties as

well as the written submissions on record.

20. This court is sitting as a Probate Court whose primary mandate is to

oversee the distribution of the estate of the Deceased to the genuine

beneficiaries. In the case of **PRISCILLA NDUBI and ZIPPORAH**

MUTIGA -VS- GERISHON GATOBU MBUI [2013] eKLR it was

held that:-

“The primary duty of the Probate Court is to distribute the estate of the deceased to the

rightful beneficiaries. As of necessity the estate property must be identified.”

21. The grounds upon which a Grant may be revoked are set out in **Section**

76, Law of Succession Act Cap 160 Laws of Kenya as follows:-

“A grant of representation whether or not confirmed, may

at any time be revoked or annulled if the court decides,

either on application by any interested party or of its own

motion -

(a) that the proceedings to obtain the grant were defective in substance;

(b) that the grant was obtained fraudulently by the

making of a false statement or by concealment

from

the court of something material to the case;

(c) that the grant was obtained by means of an untrue

allegation of a fact essential in point of law to justify

the grant notwithstanding that the allegation was

made in ignorance or inadvertently;

(d) that the person to whom the grant was made has

failed, after due notice and without reasonable cause

either -

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

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

(iii) to produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions

of paragraphs (e) and (g) of Section 83 or has produced any such inventory or account which is false in any material particular; or

(iv) that the grant has become useless and inoperative through subsequent circumstances.”

22. This provision of the law was expounded upon in the case of

RE ESTATE

OF PRISCA ONG'AYA MANDE (Deceased) 2020 eKLR

where it

was held as follows:-

“A grant of letters of administration may be revoked on three general grounds. The first is where the process of obtaining the grant was attended by problems. The first would be where the process was defective, either because some mandatory procedural step was omitted, or the persons applying for representation was not competent or suitable for appointment, or the deceased died testate having made a valid will

and then a grant or letters of administration intestate was made instead of a grant of probate, or vice versa. It could also be that the process was marred by fraud and misrepresentation or concealment of matter, such as where some survivors are not disclosed or the Applicant lies that he is a survivor when he is not, among other reasons. The second general ground is where the grant was obtained procedurally, but the administrator, thereafter, got into problems with the exercise of administration, such as where he fails to apply for confirmation of grant within the time allowed, or fails to proceed diligently with administration, or fails to render accounts as and when required. The third general ground is where the grant has become useless and inoperative following subsequent circumstances, such as where a sole administrator dies leaving behind no administrator, loses the soundness of his mind for whatever reason or even becomes

physically infirm to an extent of being unable to carry out his duties as administrator, or the sole administrator is adjudged bankrupt and therefore becomes unqualified to hold any office of trust.”

23. The Objector accuses the Respondent of moving to court to petition for

the Grant of representation to the estate of the Deceased secretly without informing the objector who was her co-wife. She further complains that the Respondent failed to disclose to the court a material fact to wit that the Deceased had a second family.

24. I have perused the petition for Grant for letters of Administration

Intestate dated **2nd March 2011** filed by the Respondent. The same names the Respondent **Florence Wangui** as the widow and her eight (8) children as the only beneficiaries to the estate. No mention is made of the objector at all.

25. In her evidence and that of her daughter **DW2** it is admitted that the objector applied for and obtained the Grant alone, without informing and/or involving the objector.

26. The Objector has asserted that she was the second wife of the Deceased. That in that capacity and placing reliance upon **Section 29** of the **Law of Succession Act**, the objector claims that she is a legitimate heir to the estate of the Deceased.

27. The Objector told the court that the Deceased married her under Kikuyu

Customary law in the year **1994**. She states that thereafter the

Deceased settled with her in the family home, that during this period

the first wife of the Deceased was not in the home having left after a

disagreement in the year **1992**. The Objector stated that when the

first wife returned in the year **2000** the two women continued to live

on the same parcel of land with each having her own compound. The

Objector told the court that she was present at the burial of the

Deceased as his wife and states that the Deceased was in fact buried

on her portion of the land.

28. It is trite law that he who alleges must prove. It is a general proposition

of the law that the legal burden of proof lies upon the party who invokes the aid of the law. **Section 107 (1)** of the **Evidence Act Chapter 80 Laws of Kenya** provides:

“107. (1) whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.”

29. **Sections 109 and 112** of the same Act provide as follows:-

“109. The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.

“112. In Civil proceedings, when any fact is especially within the knowledge of any party to those proceedings, the burden of proving or disproving that fact is upon him”.

30. The two provisions were considered in the case of **Anne Wambui**

Ndiritu -vs- Joseph Kiprono Ropkoi & Another [2005]

1 EA

334, in which the Court held as follows:

“As a general proposition under Section 107(1) of the Evidence Act, Cap 80, the legal burden of proof lies upon the party who invokes the aid of the law and substantially asserts the affirmative of the issue. There is however the evidential burden that is cast upon any party the burden of proving any particular fact which he desires the court to believe in its existence which is captured in Section 109 and 112 of the Act.”

31. The Objector has told the court that the Deceased married her as his

second wife in the year **1994**. This was after the Respondent who was the Deceased's first wife ran away. According to the objector the Deceased married her under Kikuyu customary law.

32. The requirements of a Kikuyu customary marriage were clearly set out

by **DR EUGENE COTRAN** in his pioneering work

RESTATEMENT OF

AFRICAN LAW: KENYA VOL 1 THE LAW OF MARRIAGE

AND

DIVORCE.

In that work at **Page 30** it was stated as follows:-

“(i) Capacity; the parties must have capacity to marry and

also the capacity to marry each other.

(ii) Consent;- the parties to the marriage and their respective families must consent to the union.

(iii) Ngurario; no marriage is valid under Kikuyu customary law unless the Ngurario ram is slaughtered.

(iv) Ruracio; there can be no valid marriage under Kikuyu

Law unless part of the ruracio (dowry) has been paid.

(v) Commencement of cohabitation; the moment at

which a man and a woman legally become husband

and wife is when the man and woman commence

cohabitation i.e under the capture procedure when

marriage is consummated after the eight days

seclusion, and nowadays when the bride comes to

the bride grooms home.” [Own emphasis]

33. Therefore the key elements of a marriage under Kikuyu customary law

is the '**Ruracio**' or payment of dowry and the '**Ngurario**' or slaughter of a ram.

34. There appears to have been no hindrance to the marriage between the

Deceased and the objector. No evidence has been adduced to show

and it has not even been suggested that the Deceased married the

Respondent under Statutory law. The Respondent told the court that

the Deceased married her in **1969** and that they bore nine (9) children

together. The union between the Respondent and the Deceased was

potentially polygamous.

35. On the part of the objector no evidence has been adduced to show that

any legal bar existed to her entering into a marriage with the Deceased.

As such I find and hold that both the Deceased and the objector had

the legal capacity to enter into a marital union under customary law.

36. A central facet of any Kikuyu customary marriage (and indeed of

customary marriages in many African communities) is the payment of

dowry known as '**Ruracio**' in Kikuyu as well as the all important

'Ngurario' ceremony which seals the marriage.

37. In this case the Objector states that the Deceased did visit her parents

home and did pay the dowry. **PW2** who was a friend to the couple told

the court that they worshipped in the same church. **PW2** confirms that

after the first wife of the Deceased left his home the church permitted

the Deceased to take a second wife. **PW2** states that she together

with other church members accompanied the Deceased to the family

home of the Objector and were present when the dowry was paid.

38. **PW3** was also a friend to the Deceased. Both he and **PW2** confirm

that they knew the Deceased as a polygamous man who had two

wives. In the case of **RAHAB WANJIRU NDERITU -VS- DANIEL**

MUTETI & 4 Others [2016] eKLR it was held that

“The plaintiff must prove dependency. If a wife she must prove marriage to the Deceased either by customary marriage or by production of marriage certificate or by any other acceptable manner by a letter from the chief confirming that the plaintiff is the wife of the Deceased.”

39. More importantly there is evidence that the Objector lived with the

Deceased in his family home from **1994** until the year **2010** when the Deceased passed away. The objector told the court that both she and the first wife lived on the same parcel of land with each having her own compound - a common set up in many polygamous marriages.

40. The Respondent in her evidence denied any knowledge of the fact that

she had a co-wife. Yet in the same breath both the Respondent readily admits that she did leave her matrimonial home sometime in the year **1992**. That she returned in the year **2000** only to find the objector occupying her house. The Respondent stated that well-wishers built her another house in the same compound. The Respondent admitted that both she and the objector lived in the same parcel of land with each having her own compound.

41. From the above the claim by the Respondent that she did not know

that the Deceased had a second wife was a blatant lie. The two women lived on the same property and probably saw each other every day. The objector was not living in that property as a tenant or a concubine. She lived there as the wife of the Deceased.

42. Further **DW2 Mary Muthoni** who was the daughter of the Respondent

also admits that the objector lived on the family property with her mother. She states that the Deceased (her father) had stated that he would settle the objector on another property. This shows that **DW2** was fully aware of the existence of the objector as a member of the family.

43. Moreover there is evidence that the objector attended the burial of the

deceased as a wife and according to the objector the Deceased was

even buried in her portion of a land a fact which is confirmed by **PW2**

and **PW3**.

44. The **probate and administration rules at Rule 26 (1) and (2)**

provide as follows:-

(1) Letters of administration shall not be granted to any applicant without notice to every other person entitled in the same degree as or in priority to the applicant.

(2) An application for a grant where the applicant is entitled in a degree equal to or lower than that of any other person shall, in default of renunciation, or written consent in Form 38 or 39, by all persons so entitled in equality or priority, be supported by an affidavit of the applicant and such other evidence as the court may require. [Own emphasis]

45. In the case of **Antony Karukenya Njeru v Thomas M. Njeru**

[2014] eKLR in Meru Succession Cause No. 663 of

2011 the

court held that where persons of equal priority by virtue of **Rule 26 (2)** of the Probate and Administration Rules do not give consent or renounce their rights to petition for the grant then the proceedings to obtain the grant are rendered defective in substance and the grant becomes one obtained by means of untrue allegation of facts essential in point of law. In this case the consent of the objector was neither sought nor obtained rendering the proceedings to obtain the grant defective in substance. It has been established that the Applicant was wife of the deceased who was left out unprocedurally therefore the grant issued to the Respondent is for revocation.

46. It is manifest that with full knowledge of the above facts the Respondent proceeded to court and filed a succession cause without

involving and/or notifying her co-wife. This was the height of deception. Even if the Respondent may have not accepted the objector

as a co-wife she ought to have notified her and then allowed the legal

processes to take place. Instead the Respondent clandestinely filed

a Petition deliberately keeping the objector in the dark. She concealed material evidence to wit the fact that the Deceased had a

second wife. In the circumstances I find that the Grant was obtained

fraudulently and is for revocation.

47. Regarding the monies held in the Equity Bank Account, the Objector

claimed that this account was opened jointly by herself and the

Deceased. The Objector did not avail any evidence to prove that this

was a joint account nor did she call any witness from the bank to specify

the mandate of this account. Neither has it been specified on what

grounds this bank released the funds in that account to the Respondent.

48. Be that as it may **Section 83** of the **Law of Succession Act** sets out

the duties of Personal representatives of an estate. **Section 83 (h)**

provides as follows:

“83 Personal representatives shall have the following

duties

(h) to produce to the court. If required by the court either on its own motion or on the application of any interested party in the estate, a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of the account.”

49. In **RE ESTATE OF DAVID KYULI KAINDI (Deceased)** [2016] eKLR

Hon. Justice William Musyoka stated as follows:-

“the personal representative must give account of the assets and liabilities that he has ascertained, and the assets that he has collected, gotten in, recovered or gathered and the titles he has perfected, and the steps taken to preserve the estate. He should also state the debts and liabilities that he has paid or settled before moving to court for confirmation of the grant, and if he has not yet settled the debts, state how he proposes to have them settled. The account at this state should also state the assets that generate income, stating how much has been collected and how it has been utilized.”

50. Finally I find merit in this Protest and this Court now makes the following

orders:-

(1) The Grant of Representation issued to the Respondent Florence Wangui Mwangi on

9th January 2012 and the certificate of confirmed grant issued on 13th September 2016 be and are hereby revoked.

(2) A fresh Grant to issue jointly to Florence Wangui Mwangi and Gladys Njeri Muriuki.

(3) The Respondent Florence Wangui Mwangi to file within forty (40) days a full and accurate accounts in respect of her management of the estate from 13th September 2016 to the date of this judgment.

(4) Costs of this Protest to be met by the Respondent.

Dated in Nyeri this 10th day of April 2026.

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MAUREEN A. ODERO
JUDGE