

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT THIKA
CIVIL APPEAL NUMBER E280 OF 2024

NANCY MUTHONI WANJOHI..... APPELLANT

VERSUS

JACINTA MUMBI NJOROGE.....1ST RESPONDENT
PETER MWANGI MUTHIKE.....2ND RESPONDENT
DAVID GACHUHI CHARAGU.....3RD RESPONDENT
SAMUEL NJUGUNA KINYANJUI.....4TH RESPONDENT

*(Being an appeal from ruling and orders of Honourable V. Asiyo, PM dated
17-09-2024 in Thika Chief Magistrate’s Court succession cause number 179
of 1992)*

JUDGMENT

Njoroge Kwihota (hereinafter referred to as ‘the deceased’) died on 10-03-1988 upon which the 1st respondent filed succession cause in the lower court vide succession cause number 179 of 1992 in her capacity as the widow of the deceased. Grant of letters of administration were issued in that cause to the 1st respondent on 14-12-1992 but the respondent never made an application for confirmation the grant. Instead, she seems to have disposed some properties belonging to the estate to third parties which in turn changed hands to the 2nd, 3rd and 4th respondents between 2009 and 2014.

The record shows that the appellant approached Ruiru Chief Magistrate’s courts with succession cause number 22 of 2020 in her capacity as the deceased’s wife where she was issued with a grant dated 6th August 2020. According to the appellant, she discovered that the 1st respondent was a holding grant in the Thika cause after filing the Ruiru cause and that is what prompted her to file summons for revocation of grant in the Thika cause dated 9th July 2020.

The application for revocation of grant was never heard on merits as the 1st respondent never responded to the same which resulted to the grant being revoked on 27-07-2021 with a further order that the area chief who had issued a letter which guided issuing of the grant do appear in court to explain the whereabouts of the 1st respondent. The chief never appeared but upon filing of an application by the 2nd, 3rd and 4th respondents for review of the order for revocation of the grant, the 1st respondent appeared stating that she had been served by the said respondents.

In support of the other respondent's application for review aforesaid, the 1st respondent denied that the appellant was wife to the deceased. The trial court on 31-01-2023 directed that the appellant and the 1st respondent do file witness statement in relation to their alleged marriage to the deceased and restrained the 2nd, 3rd and 4th respondents from filing any statement for the time being pending the determination of the issue of marriage.

After filing their respective statements, the trial court in the ruling which is being challenged in this appeal held that the appellant was not a wife to the deceased and recognised the 1st respondent as the only wife. Going by what I read from the ruling, the trial court's reason for finding as she did was that, the appellant had delayed in challenging the grant in the cause or filing a succession cause and that the appellant could not produce a burial permit yet she claimed to have buried the deceased.

The appellant has raised what I would call a repetitive sixteen grounds of appeal which in my view can be collapsed to only one issue which is, whether there was proof that she was a wife to the deceased and hence entitled to be included in the succession cause. The parties' evidence in the trial court is reproduced below.

The 1st respondent's case

The 1st respondent told the court in her testimony that she got married to the deceased in 1960 under Kikuyu customary law. They had their first born who unfortunately died after which they got another child in 1961 while they were living in Kalimoni where the deceased used to work as a watchman. She stated further that her husband was later invited by a friend known as Mr. Kamwaro to Narok and she relocated there with five of their children with a purpose of cultivating. She did so in 1982 leaving the older children with their father. She added that, she would go with their small children to cultivate the land and come back to their home in Ndarugo.

The 1st respondent testified further that before she relocated to Narok, the deceased and her bought shares in Githunguri Constituency Ranching Co. Ltd (hereinafter referred to as 'the ranching company') in 1968. In 1970, they were allocated another land at Gatongora village in Ruiru sub-county where she relocated and the deceased would visit them when off duty. He was living at Kalimoni with one of their sons known as Peter Mwangi and the deceased's brother in law, Peter Mwangira.

It was her further testimony that, the deceased confirmed to her that he had slaughtered a goat and paid Kshs 200/= being value for ten goats as dowry and provided a gourd of traditional liquor for elders during their traditional marriage ceremony. She added that in her entire life with the deceased, she had not heard of the appellant and only came to know of her through the 2nd, 3rd and 4th respondents in June 2022 when they served her with their application for review.

According to the 1st respondent, she had lived with the deceased until 1988 when she heard of his death under mysterious circumstances. She added that the appellant was working in cahoots with the wife of the deceased's brother-in-law Peter Mwangirai. The said wife known as Kibui had before filing of the succession cause, attempted to take over her two pieces of land at Gitambaya by presenting herself before the ranching company as the wife of the deceased upon which she was advised by the chairman of the ranching company to take out letters of administration for the land to be transferred to her name after which she sold the two properties. She added that she was also recognized as the wife of the deceased in the records of the National Social Security Fund where she withdrew the deceased's benefits. She produced a total of 16 exhibits.

In cross-examination, she averred that the deceased paid dowry when they had three children but she was not present as the husband went with other men where they paid part of the dowry of 90 goats and honey. She denied having been separated with the deceased as she would visit him and stay for three months as she harvested the farm produce. Her children who were living with the deceased never told her that the deceased had another wife. She stated that she did not attend the burial of the deceased and that she sold the land with the grave in it.

The 1st respondent's second witness was her brother, one Paul Kamau Gicheha who told the court that in 1960, the 1st respondent got married to the deceased. He added that some years later, the deceased visited with his nephew Peter Mwangi where they met the 1st respondent's elder brother, one the late John Muhuha. The visit was at Kaharati Kwa Mugeka in Nyandarua where the 1st respondent's mother lived. During the visit, a small ceremony was conducted in which the deceased informed their mother, brother and the neighbours present that he had married the 1st respondent. They discussed dowry and the deceased

was told to pay 100 goats with each costing Kshs 20/=. The deceased paid for 10 goats. He confirmed that the 1st respondent and the deceased marriage rites were completed.

He admitted in cross-examination that he was not present when the dowry was given as he was staying in Kanangop. He added that the children used to live in Juja but shifted later and that he was not close to the deceased as he had seen him twice only.

Peter Mwangi Njoroge the 1st respondent's son told the court that the deceased was his father and that he was born and raised in Kalimoni. At the time his father died, he was a turnboy for lorries ferrying potatoes from Narok to Kiambu. He added that he did not know the appellant and that his father did not have another wife. He was firm that he was raised in Juja with his mother and siblings until the 1st respondent left for Narok with the younger siblings leaving him with his sister Wanjiku and brother Ndung'u.

The witness added that he stayed with the deceased until after he underwent the right of passage. He testified further that when he was still young, he accompanied his father and uncle, the husband of his aunt Kibui, to his grandmother's place in Njambini where there was to be a ceremony for his mother's dowry.

In cross-examination, the witness insisted that he was the 2nd born in a family of five children and that he worked with his father for one year when he was 17. He was left with his father when the 1st respondent moved to another area. He explained that he came to know of his father's death in April 1988 from the 1st respondent and admitted that the deceased was buried by his aunt Kibui and other people.

Hannah Wangui Njoroge told the court that she was a daughter of the 1st respondent and the deceased having been born to them in Kalimoni. She added that she stayed in Gatongora with the deceased and the respondent until her mother, younger brother and sister moved to Narok when she was six years. She added that the deceased would visit them in Narok. In 1992, they moved out of Narok because of tribal clashes. She also claimed that she learned of her father's death in 1988 and denied knowing the appellant or that the deceased had another wife or family.

The witness added that she decided to get married and when she took her husband to meet her father, she was informed by her aunt Kabui that, he had died and when she enquired why they had not been notified, the aunt told her that she did not know where they lived.

In cross-examination, she insisted that she informed her mother of their father's death after she was told by her aunt in 1990. She did not know the chief of Kalimoni as they had moved from there when she was five. She did not know how he was buried.

The appellant's case

The appellant testified that the deceased was her husband having married him in 1978 through Kikuyu customary marriage after courting since 1977 upon which they started living together as husband and wife at Kalimoni. Before she married him, she had two children and thereafter they were blessed with three. She also got another child after the deceased passed on. The appellant stated that she was the one who buried the deceased at his farm in Gatongora and that she was not aware that there was another wife.

The appellant added that the deceased and his sister took Kshs 1,000.00 to her parents and later Kshs 800.00 was sent through to the parents through the deceased's sister as part of the dowry. In 1978, the deceased informed her of having purchased a share in the ranching company to which she also made contribution by giving him some money for the balance of the purchase price. The deceased's parents had died before they got married and she had no occasion to meet them but she met his sister one late Monica Njeri from Molo and Serah Kibui who lived in Rironi in Limuru. The appellant added that the deceased followed up dowry payment in 1982 in the company of elders David Kimui, the late Njuguna Gachanja, Wa Gatu, the late Kimani Kiruku and the deceased's sister on which date a sum of Kshs 10,000/- was paid to her late father.

The appellant added that in 1983, they relocated to the land they had bought which she claimed to be their matrimonial home. She stated further that, the deceased and their daughters fellowshipped at AIPCA church in Ruiru where she served as a treasurer. She maintained that they were known as a family and she was well known by the neighbours as the deceased's wife.

She claimed that she took care of the deceased when he was down with sickness and had to undergo an eye surgery at a time their children were very young until 8-03-1988 when he failed to come back from work. When she visited his house in Juja, there was no indication that he had been there few days before as the food and utensils had grown moulds. He was later found dead at Gwa-Kigwi farm after she had reported his disappearance to the police.

Upon recovery of the deceased's body, she prepared and organized for his burial with the help of AIPCA Ruiru church and the deceased's nephew one William Ndungu Chege. During the burial, there was no indication of a second

wife or family. She maintained that their marriage was not a secret to the public. She added that she relocated from the home to a place designated for a market due to insecurity incidences in the area but she continued to check on the grave which has now been vandalized by strangers.

She narrated to the court the frustrations she experienced from the police after discovering that the deceased's land had been transferred to another person. She claimed that she went to the ranching company where she got no assistance which made her to go back to the area Chief on 2-12-2011 who wrote a letter of introduction to court for purposes of succession but she did not have money enough to file the cause. She discovered in July 2016 that the 1st respondent had in 1992 transferred the deceased's land claiming to be his wife despite her holding the original documents.

In cross-examination, the appellant stated that when she met the deceased, he did not tell her that he had another wife. She claimed that she was the one who showed the surveyors where the deceased's land was as she had participated in buying it. She did not know the 1st respondent and only got her name from the lands office. She denied knowing that the 1st respondent was paid any money after the appellant's death and that she had not followed up his terminal dues and that she did not know why her name was not in the deceased's employer's books.

She stated that the deceased used to live in Juja until he died but he would visit them in Gatanga and that is why she got introduction letter from the Chief in Ruiru and not Juja. She admitted that the Chief who wrote the letter did not know the deceased and it was her who told the Chief about the deceased. She added that she had minutes of the dowry ceremony but she had not filed them in

court. She insisted that she buried the deceased alone and that she had evidence to that effect because she was also holding the original documents.

Pastor Charles Thuo Kiarie, a pastor with AIPCA church in Ruiru was the second witness for the appellant who testified that he came to Ruiru in 1970 where he had been serving since then. He added that in 1983 when he was serving in the church, he came to know the deceased and his wife the appellant who were members of Kwihota church within his parish. He added that he also dedicated the couple's children.

The pastor added that the deceased was a founder and devoted member of the church and was always in the company of his wife and children and their families used to visit each other. He even claimed that the deceased told him of his properties in the ranching company and added that he was a pastor, confidant and friend to the deceased.

The witness added that when the deceased died, he mobilised members of the church for prayers at the deceased's home and that he is the one who conducted his funeral service in the church and later buried him in his land. He swore that during burial, no one except those he knew came to claim any relationship with the deceased. He stated further that the deceased's family later shifted from the home he was buried due to insecurity and relocated to Mutonya market. In his life, the deceased did not introduce to him any other wife neither did he hear of his extra marital affairs.

He was cross-examined and stated that he became a pastor in 1983 and insisted that the deceased did not tell him of the 1st respondent. He maintained that he did not know the 1st respondent or her children with the deceased. But he knew nothing about the deceased's wedding to the appellant or when they got

married. He stated further that the deceased lived in Juja but the appellant was not living there. He concluded by saying that the deceased came to the church in 1980s.

The next witness was John Wachira Wanjohi who told the court that the appellant was his elder biological sister and that she got married to the deceased under customary procedures in 1978 and that he used to visit them in their matrimonial home in Ruiru during the subsistence of their marriage. He stated that the deceased visited their parents with his sister one Monica to announce the marriage. He was present in the meeting which was also attended by Mzee Dedan, the late Mzee Thiga, his mother and brother Francis Mwangi. He added that Kshs 1,000.00 was paid on the date and a further Kshs 800.00 for goats was paid later by his sister Monica which he was informed by his father. The witness testified further that in 1980, the deceased came back accompanied by the appellant and his sister Monica and paid Kshs 10,000.00 as dowry. He was also present and witnessed the transaction. He insisted that the deceased performed all the required rites for a customary marriage.

In cross-examination, the witness testified that he was not aware that the deceased had another wife. He was also not aware that the Directorate of Criminal Investigations had investigated the case. He admitted that one should go for dowry negotiations with elders and that the deceased did not go to their home with any elders. He added that during the ceremony, his father cut the goat and the deceased brought alcohol. He did not see the deceased since then and added that the meeting had recorded minutes. He claimed that he knew Kikuyu customs.

The appellant called Margaret Wacuka a farmer and her elder sister who testified that the appellant got married to the deceased in 1978. She claimed that

the deceased and the appellant used to visit her in her home in Gitaru in Limuru. She repeated the narration of how the deceased visited their parents and paid dowry just as narrated by her brother, John Wachira. She was later informed of the death of the deceased but she did not personally attend his burial.

She confirmed in cross-examination that she was not present when the dowry negotiations were carried out. She did not know where the deceased came from or whether he had another wife. She was aware of a ceremony known as ***uthoni*** which comes after dowry negotiations and she never heard of it being performed in respect of the deceased and the appellant's marriage. She added that in the ceremony of ***uthoni***, the groom cannot be represented by his sister as it has to be a man.

The fifth witness for the appellant was Milkah Wangui. She stated that she knew the deceased and the 1st respondent as his wife as they were worshippers in the same church she attended. She knew the deceased as a committed member of the church who always introduced the appellant as his wife. When the deceased passed on in 1988, the church led by their pastor arranged his burial. The burial was led by their pastor in the deceased's land in Ruiru where he used to live with his wife and children before his death on which day nothing unusual happened.

In cross-examination, the witness stated that she could not remember the date the deceased and the appellant became members of the church and she was not aware that there was another wife. She had never been in their home and only saw them on Sundays. She did not know the 1st respondent.

Nancy Njoki testified that she knew the deceased and his wife, the appellant who were shareholders in the ranching company just as she was. She claimed

that her families and that of the deceased were so close that at times, they would leave their children in each other's house when they went out for jobs. She added that she would in some occasions go to pick coffee with the appellant. The rest of her evidence was not different from that of the other witnesses who were fellow worshippers with the deceased and I do not see the point of reproducing the same in this judgement.

Hannah Wanjiku Njoroge, the appellant's daughter stated that she was the third born daughter in the deceased's family. She added that, she was born in 1984 at Mutonya and that they were raised in the land where matrimonial home is claimed to have been. She claimed that her parents were married under Kikuyu customary law and that they lived together until the deceased passed away after which they shifted from the home due to insecurity in the area. One day, the appellant went to the land where the deceased was buried and found beacons and her efforts to get help from the Chief, the police and the ranching company were not fruitful.

In cross-examination, she stated that her father died when she was five. She denied knowing the 1st respondent and admitted that her father was living in Juja and that she never went there. She also stated that she never visited her father's ancestral land in Kitale.

Pauline Wangui Njoroge, an ECDE teacher told the court that she was a daughter of the deceased born in 1986. Her evidence was similar to that of Hannah Wanjiku safe that she was relatively younger when their father passed away and the fact that due to her age, she could not tell at the time of the deceased's death whether their parents were married.

Another witness known as Paul Kamura Magoya who said that he was born in 1971 testified that, the deceased and the appellant who she referred to as husband and wife were his neighbours. He claimed that the deceased was a very close friend of his father. He claimed that he was brought up together with the deceased's children and he knew the appellant as the wife of the deceased. He added that he never heard of any other wife or children of the deceased.

In cross-examination, he stated that he knew the deceased in 1980 when he was nine and added that the deceased used to work and live in Juja then come home during the weekends while the wife and children lived in their village, Gatongora.

There was a witness known as Peter Mwangi Mwathike whose evidence is not relevant to the issue I am supposed to determine herein. His testimony bordered on purchase of the deceased's land by some thirteen people and since I am called upon to determine the issue of marriage only, that evidence is of no help to the case before me.

Analysis and determination

The appeal was disposed of by way of written submissions. I have read the submissions of the appellant and the 1st respondent. The other respondents did not file any submissions perhaps because their case was not relevant to relationship between the deceased, the appellant and the 1st respondent. I have also considered the evidence of the parties including the numerous exhibits produced by both sides.

This is a first appeal which I should consider as I would do a hearing. It is my duty to re-evaluate and re-analyse the evidence on record and come to my own independent conclusion but bear in mind that I did not hear the witnesses

neither did I have the advantage of observing their demeanour and therefore give due allowance for that. This is trite principle which has been applied in handling first appeals as held in *Mursal & another v Manese (suing as the legal administrator of Dalphine Kanini Manesa)* [2022] KEHC 282 (KLR) thus;

‘A first appellate court is mandated to re-evaluate the evidence before the trial court as well as the judgment and arrive at its own independent judgment on whether or not to allow the appeal. A first appellate court is empowered to subject the whole of the evidence to a fresh and exhaustive scrutiny and make conclusions about it, bearing in mind that it did not have the opportunity of seeing and hearing the witnesses first hand.’

It is notable that none of the parties called a witness who I may consider to be an expert in kikuyu customary law on marriage. None of the witnesses took the court through what constitutes a recognizable customary marriage under kikuyu customary law and in the circumstances, I have no basis on which to ascertain whether or not the appellant and the 1st respondent were validly married to the deceased under the said customary law. I can only answer this issue relying on what I would call indicators of existence of a marriage.

To start with, the deceased appears to me to have been a person who lived life of secrecy as far as his marital status was concerned. Despite the neighbours and church members who testified on behalf of the appellant painting him as a strong man of faith and high moral standing, the evidence produced in court does not depict a person who was open and straight in his filial and marital relationships. This is not to say that having more than one wife is wrong or translates to less moral values but where one chooses a path of polygamy or has children outside the wedlock, it would help his family and community at large if he was open about it. It is always a painful experience to those left behind when

other women and men come out to claim to be spouses or children of the deceased. Anyway, that is why we are here at the expense of the taxpayers to try to settle things whose truth everyone in the mix except the Judge knows.

I will start with the 1st respondent. The 1st respondent and her witnesses' evidence is to the effect that, she got married to the deceased in 1960. She gave a chronology of the children they had. The appellant's children who testified in court also gave the court an account of how they lived together with the deceased and the appellant as their parents up to about 1982 or thereabout when she relocated to Narok where she continued farming until 1992.

It is also clear from the documents produced by the appellant that the deceased took, recognised and lived with the appellant as his wife. The deceased had and caused the appellant's name and status as his wife in his employment and social security records. If indeed the deceased had considered the appellant as his only wife in exclusion of the 1st respondent, he would have changed this status when he separated with the 1st respondent and embraced the appellant.

The 1st respondent also testified that the deceased entered her as the wife in the ranching company's record a fact which has not been seriously challenged by the 1st respondent. However, I note that the receipts issued by the ranching company in the name of the 1st respondent came after the death of the deceased and they therefore do not hold much probative value in proving the marriage. In the same breath, I have no reason to doubt the letter dated 9-09-1992 written by the Acting Chief of Juja location under referenced number JUJ/MDS.18/VOLI/209 which introduced the 1st respondent as the deceased's wife leading to issuance of the grant on 14-12-1992.

In my analysis and having reviewed the evidence of the 1st respondent and her witnesses, it is clear to me that she relocated from their matrimonial home in Ruiru sometimes in 1982 to Narok and although she may have left the older children with the deceased, she did not come back to the life of the deceased. It is abnormal and not ordinary that a wife who is in touch with her husband would not know of his demise for two years. Although the 1st respondent was not clear on when she discovered the death of the deceased, it is on record from the testimony of her daughter, Hannah Wangui Njoroge, that she was informed by the daughter in 1990.

I also find it strange and incompatible with a cordial and working husband and wife relationship that after the 1st respondent left Narok in 1992 due to tribal clashes, she camped at some place until she was allocated another land in Tana Delta where she relocated to and lives to date. If indeed she had a subsisting home in Juja or Ruiru, she would definitely have come back after the tribal clashes. This however does not mean that she was not the deceased's wife as there was no evidence that the two were formally divorced. The reason for the separation remains a mystery to this court and the person who claim not to have known her. It is only the 1st respondent and probably the appellant who know the reasons for the separation. Having said the above, I have no doubt that the 1st respondent was a wife to the deceased.

Come 1978, the appellant is said to have come to the life of the deceased. There is evidence which was not challenged that the appellant cohabited with the deceased as husband and wife between 1978 until the deceased passed on in March 1988. Although the deceased is said to have been living in Juja while the appellant was permanently in Ruiru, this court believes the repeated testimony of the witnesses called by the respondent to the effect that the deceased would visit the appellant and her children on weekends.

I also have no reason to doubt that the appellant and the deceased had three daughters during the period they lived together as husband and wife. It is not clear to me whether their matrimonial home was established in Ruiru where the deceased was buried or at Mutonya market where the appellant and her children lived but what it is clear is that for the ten years they were together, there was a bond of a married couple.

The appellant was the one who made efforts to look for the deceased when he went missing. Although the two daughters, Hannah Wanjiku Njoroge and Pauline Wangui Njoroge had no capacity to testify as to the marriage between the parents, they regarded the deceased as their father. This coupled with the evidence of the neighbours, church members, the family's friends and the relatives who testified though scantily on the aspect of the customary marriage and payment of dowry, leaves no doubt in my mind that there was a wife and husband relationship between the appellant and the deceased.

I am aware that the pastor's evidence of the deceased and the appellant having been members of his church, their participation in the church activities, the burial arrangements and interment of the body are not in law proof of marriage but the peculiar circumstances surrounding this case and the fact that the 1st respondent and her children kept aloof of the life and the burial of the deceased only to show up after two years to take out the grant then vanish, is enough proof that the deceased had another wife and family apart from the 1st respondent.

Considering what I have stated above, I am inclined to follow the reasoning of Honourable Justice W.M. Musyoka in ***Re Estate of Lihasi Bidali (Deceased)*** [2019] KEHC 7583 (KLR) while dealing with issue of presumption of marriage

where there was no proof of customary marriage but there was evidence of long period of cohabitation resulting to bearing of three children. The Honourable Judge held that;

‘Just like in the case of Grace Wambui, I would find it inconceivable that the deceased would have had three biological children with a woman that he was not married to. Consequently, on that account, I am persuaded that the deceased and the said Magdaline Mutugi did cohabit and the three children were conceived during the period of the said cohabitation.’

When the aforesaid matter went to the Court of Appeal as ***Musela v Wambui & 3 others [2024] KECA 679 (KLR)***, the judgement was upheld with the Court holding that;

‘We do agree with the trial judge to the extent that the circumstances surrounding the lives of the two women with the deceased, including the siring of children and long cohabitation, no other inference can be drawn other than they lived as husband and wife respectively under ‘come we stay arrangement’ which connote to a large extent the presumption that the parties are married. It is largely an accepted form of marriage in our country.’

When the 1st respondent showed up, she was quick to take out letters of administration, transfer the deceased’s property to her name and dispose of the same without confirming the grant. This conduct depicts a person who was quick and desirous of disengaging with the deceased and perhaps stealing a match against another household she knew of.

As mentioned earlier, the trial Magistrate’s reasons for finding that the appellant was not married to the deceased was the fact that she delayed in following up or challenging the succession cause and the fact that she did not hold a burial

permit. This position is not sound in law because, whereas delay is a factor of consideration, there is not time limitation in matters of succession. Further, a delay does not sever or extinguish an established relationship although it may have negative repercussion as the ones witnessed in this matter where property was transferred and distributed to third parties but that is an issue for another cause.

Again, failure to hold a burial permit cannot be a ground for finding that a person claiming beneficial interest in an estate was not related to the deceased. A burial permit is a document which is meant to enable or authorize the holder to dispose the body and cannot establish a relationship or be an instrument of title. In any event, even the 1st respondent did not produce any burial permit.

In view of what I have stated above, it is my finding and I hold that the appellant was also married to the deceased. This leads to inevitable conclusion that, the deceased had both the 1st respondent as first wife and the appellant as second wife. That would be enough to dispose this appeal but there is one more thing this court must deal with.

I have noted that after the grant was revoked on 27-07-2021, the estate has to date remained without an administrator despite the evident serious exposure. An estate of a deceased person is always under protection and control of the court especially where there exists a succession cause and it is the duty of the court which issued the grant to always ensure that the estate is not exposed to waste. This is a matter where a grant had been issued and apparently misused and it was not safe for the court to revoke it and leave it open for further abuse.

The trial court should have, after making a finding on the marriage, gone a step further and made an appropriate order to secure the status of the estate noting

that the same had not been distributed according to the law. In that regard, I will exercise my inherent powers under Section 47 of the Law of Succession Act and Rule 73 of the Probate and Administration Rules and issue orders that I consider to be appropriate in securing and protecting the estate from further waste or exposure.

Accordingly, I hereby make the following final orders;

1. Ruling and orders of the trial court dated 17th November 2024 in Thika Chief Magistrate's Court succession cause number 179 of 1992 are hereby set aside and substituted for an order that the appellant and the 1st respondent were both wives of the deceased.
2. A fresh grant of letters of administration shall forthwith issue to the appellant and the 1st respondent jointly.
3. The appellant and the 1st respondent or either of them shall within thirty (30) days from the date hereof make an application for confirmation of grant before the lower court.
4. The issue of distribution of the deceased's estate shall be tried in the lower court's cause with all the beneficiaries of the deceased's estate at liberty to participate in accordance with the law.
5. In the meantime, an order is hereby issued restraining any of the parties herein including the 2nd , 3rd and 4th respondents or any other person from transferring, disposing, charging or in any way encumbering or changing the status of all that parcels of land known as Ruiru/Kiu Block 2(Githunguri)/2576, Ruiru/Kiu Block 2(Githunguri)/24139 or any resultant subdivisions or amalgamations of the said parcels or any other

asset belonging or that once belonged to the estate of the Njoroge Kwihota (deceased) prior to his demise.

6. Each party shall bear their own costs of this appeal.

Dated signed and delivered at Nairobi this 17th day of April 2026.

B.M. MUSYOKI
JUDGE OF THE HIGH COURT.

Judgment delivered in presence of Miss Martha Waweru for the 2nd, 3rd and 4th respondents and holding brief for Mr. Gachoka for the 1st respondent and in absence of the appellant.