



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KERUGOYA
CIVIL APPEAL NO. E061 OF 2022

MARY WANJIRU WACHIRA.....1ST APPELLANT
 LUCY WAGUTHII WACHIRA.....2ND APPELLANT
 JOYCE NYAWIRA WANJIRA.....3RD
 APPELLANT

VERSUS

CATHERINE NYAWIRA MWANIKI.....1ST
 RESPONDENT
 SUSAN WANJIRA WANJOHI.....2ND RESPONDENT
 DELICK NYAGA WANGITHI.....3RD RESPONDENT

*(An appeal from the Ruling of Hon. E. O. Wambo (PM) delivered on 30/6/2022 in Kerugoya
 Succession Cause No. 90 of 2020)*

JUDGMENT

- [1] On 10/3/2021, the 1st Appellant, the alleged wife of the deceased herein, filed Summons for Revocation of the Grant, on the grounds that it was obtained by means of untrue allegation of facts, and that she was left out as a beneficiary thereto.
- [2] The 1st Respondent swore a replying affidavit on 24/5/2021 in opposition to the application. She urged that the deceased had only one wife namely Lucy Wangithi (now deceased), during his lifetime, and all the laid down procedures were adhered to.
- [3] The 1st Appellant, Jane Catherine Karuana, Francis Bundi Ngandi, Samuel Muriithi and Lucy Nyaguthii Wachira filed a witness statement dated 28/6/2021, 7/7/2021 and 29/7/2021 in support of the application.
- [4] Wilson Munene Rwangi, Wilson Mbugi Mwaniki, Edwin Munene Mutongu and Delick Nyaga Wangithi filed their witness statements in opposition to the application.

[5] Upon full hearing, the trial court found the application to be without merit and dismissed it.

The Appeal

[6] On appeal, the Appellants filed their Memorandum of Appeal on 20/7/2022 raising six (6) grounds as follows:

1. *The Learned Magistrate erred in law and fact by holding that the 1st Appellant was not a wife of the late STANLEY RWANGI KIRAGU-DECEASED whereas evidence tendered was sufficient.*
2. *The Learned Magistrate erred in law and fact by holding that there was no dowry paid to the 1st Appellant whereas evidence tendered was sufficient.*
3. *The Learned Magistrate erred in law and fact by not properly considering the Appellants as dependants whereas the evidence tendered was sufficient.*
4. *The Learned Magistrate erred in law and fact by holding that the nomination of the 1st Appellant in respect to Ollin Sacco Account was under undue influence or coercion whereas no evidence was tendered to make such a finding.*
5. *The Learned Magistrate erred in law and fact by holding that the 1st Appellant was a care giver or a maid to the late STANLEY RWANGI KIRAGU, and not a wife.*
6. *The Learned Magistrate erred in law and fact by not properly considering the evidence on record and the submissions by the Appellants.*

Duty of the court

[7] This being a first appeal, this court is duty bound to delve at some length into factual details and revisit the facts as presented in the trial court, analyse the same and arrive at its own independent conclusions, but always remembering that, the trial court had the advantage of seeing the witnesses testify. (See **Selle v Associated Motor Boat Co. & others [1968] E.A. 123**).

Oral Evidence

[8] **AW1 Mary Wanjiru Wachira**, the 1st Appellant herein, testified that, “I stay in Karieni, in Kirinyaga County. Lucy Wanyumi Wawira, Joyce Ngairu Wanjiru. I know Catherine

Nyawira is my husband's sister, Susan Wanjiru Wajuhi, they are children of the deceased. I adopt my statement dated 28th June 21. The deceased was my husband under Kikuyu customs. In 2018 July he brought 2 crates of Soda for introduction ceremony. He paid Kshs 30,000/-. He was asked for a panga and Jacket. He was asked for a He goat, Ram, Bull and a Cow. He paid Kshs 30,000/- in 20th August, 2018 he, visited our home and brought Kshs 10,000/- for He Goat, Sword, in the 1st meeting, he was Francish Mbundi, Zacharia Karimi deceased, Muthoni Njoki, Jane Karuana, our side was presented by Munyunyiu, Muriuki summoned my sister and one of my daughter this was in July 2018, Jane Karuana brought him on the 2nd time. On my side it was my parent and sister. We did not slaughter goat but he gave money. He told me he had another wife and they parted when the children were young. I was married in 2013, I didn't get the children with the Respondent. They were brought in March 2019. They were brought by their untie. I was told they were his children the deceased called. The items he was produced it was written: 1. Dowry List dated 7th July, 2018, plus translation as P. Exh 1. I produce it as P Exh 1(a) and translation into English. The letter of 26th July 2022. He gave me the letter to keep. It is a photocopy. The original is with Ollins Sacco, I wish to produce as P Exb 2. Copy of the deceased, Identity Card. When I went for the death certificate I left the original Identity Card. The PIN Certificate I was keeping them as he as my husband. I wish to produce them as my exhibit. P exb 3 and 4. PMF1, 3 P Exb 4. The PIN certificate. I have school fees receipt for Lucy Nyaguthie Wachira P exb. 5. My husband paid himself. I produce the inventory dated 21st October, 2021 as P exb 6. In the Inventory certificate of death. I had it as the wife. There is withdrawal receipts from Family Bank 2 receipts for deposits. I wish to produce them as P exb 6 A and B. The witness are MFI 6A and B. The consent letter dated 5th October, 21. He recognized me as the wife of the deceased P exb 7. I also produce the Chief letter dated 13th October. 20 P exb 8. On the 1st letter only me and my children were written, on the 2nd one, myself and 2nd Respondent were written. I had gone for my benefits when I went I found the Respondent there I was sent to include everyone. a caveat on the land P exb 9. I short I pray for the properties I was given by my husband. I have some receipts from Family Bank PMFI 6 (A and (d). Unison Sacco PMFI 10 (a) (b) and (c). He used to give me receipts to keep as his wife. In my receipt there a discharge from the hospital. He had taken poison. I was the one taking care of him. The sister refused to come. I was to

produce them as part of my evidence PMFI 11 A and B. The letter dated 6th October 20, is from my children advise me PMFI 12. I was never a house help I was his wife. He had introduced me as the wife. They never used to come and visit. He was sick. He was paralyzed waist downwards. From 2013 I was his wife. He was also blind. In the eulogy am not mentioned. They wanted to disinherit. I attended the funeral. In 30th October, 20 we were at the Chief. The elders said I had no evidence of being a wife. When I went to the Chief Wilson Mureithi and others we went and they declined me. They offered Kshs 20,000/- I declined. I wanted 100%. The court will decide. The Chief revoked the letter of introduction. If I say the Chief had been promised something I would not be lying. I was not being paid Kshs 700/- as salary. I was a house wife. The Chief is from my village. When I was married I never saw the children. He was not supporting them. They were raised where the mother was married. Wachira was my husband earlier and he died in 2005. The deceased received dowry as the token of Joyce Nyawira.”

- [9] On cross examination, she stated that, “I am Mary Wanjira Wachira. I did not change my name. Wachira is the name my deceased husband, Geoffrey Wachira. I have not produced the death certificate. Lucy Waguthii Wachira and Joyce Nyaira Wanjira are children of Geoffrey Wachira. The inventory was done by DCI Kerugoya. It says his house is in Kariko. It is not Kareini Village. The place where the properties were recorded in the inventory is Wachira’s home not the deceased. The deceased and I never had a marriage certificate. He died before we conducted ceremony. He was my husband July, 2018. There are no photos. There were no minutes. The phone we used got lost. I stayed with him in Narumoro. He witnesses died. I have no Chief letter - from Narumoro. PMFI 1A. There is no names done. No signatures, He educated Lucy at Our Lady Nursing College P exb 5. It reads Lucy Waguthii Wachira. It is paid Anthony who was a clerk. My name is not there. Stanley paid. His name is not there. Stanley received dowry of Joyce Nyawira. I have no pictures. No photos were taken. The deceased was not blind. When I married him he was seeing he had vision he stopped seeing in 2018. When the dowry was paid he wasn’t seeing. He died in June, 20. I didn’t participate they removed me. I didn’t go to the Chief or Court. I only got to know the day of the burial. I did not object anywhere. I attended the funeral. I was not recognized. It is not true my children were not recognized. The elders meeting, they said I was not the wife. The meeting was on 30th October, 20. I knew him while he was working at Narumoro as an Accountant. He

was not a Clerical Officer but Accountant. I know the 1st Respondent she did not attend the ceremony. I knew her in 2019. He never introduced me to anybody in his family. The people who came were not from his family. I am from Unjiru Clan. Fundi was staying in the compound he used to pay me. The house had a kitchen we were cooking using gas, I was not a maid. The Hospital documents. The discharge summary. There is nowhere associated to me. They are his children. We should share the property. I was his wife. The Chief wrote 2 letters. 1st was myself and my children without Derrick and Susan. I have no Will saying they shouldn't inherit. I did not have the burial permit. I used the Identity Card without the burial permit. The 2nd Letter the Chief only recognized 2 children. I don't know my letter was revoked. My daughter and I have no case at the Chief's Office. The school fees receipt have no name of the deceased. I am the one who used to pay not him. He gave me the money. The withdrawal was not shown the reason for withdrawal Unison. It was not for his treatment. He had stomach ache. The Letter didn't reach. The procedure wasn't followed. The house was destroyed. I don't stay there. I did not report to the police."

[10] In re-examination, she stated that, *"Para 15, Replying Affidavit, I have inherited from the husband estate. He died 2005. The inventory show the items were removed from Kariko when I as chased I took the document. I was married under Customary law. I have school receipts. They are written in the name of the student. During the Eulogy I was not involved. I was chased away. I was given the death certificate using the Identity Card. The discharge summary is written the patients name. Bank receipts. No reasons for withdrawal is disclosed. Before his death we were staying together. The money I was given by Bundi was as is wife. The family had abandoned him."*

[11] **AW2 Catherine Nyuki Wanjau**, testified that, *"I am the Internal Auditor, I am here pursuant to court order. We have filed a copy of the Nominee Card. I have the original card. The next of kin, was Mary Wanjiru Wachira the description is wife at 100%. It was for 14th October 20. In the presence of Mary Wanjiru and children I produce the same as P Exh 13."*

[12] On cross examination, she stated that, *"Ollin Sacco has a C.E.O Vide the letter, I am the C.E.O. I have no special resolution to authorize them neither do have an appointment letter. The Nomination of Mary Wanjiru Wamiru has no identification number. The Nominee Card has the thumb print. There is no certificate of thumbprint. No*

Affidavit indicating, he had been explained to do the nomination. The person, who placed the thumbprint was blind. It is done outside the Sacco. It was done at home. It only brought to office. I witnessed the payment of dowry in 2018. I was present. I know the deceased. I did not know he had a family. I don't know Catherine, the sister. He said he did not have children. He never came with anyone from his family. I was only invited. I don't know what was happening. There was an elder Zacharia from their side. He died. Stanley was not blind. He was seeing. He as in a wheel chair. He paid the dowry price Ksh. 30,000= . I have no document to show dowry was paid. Dowry payment is an important function. I did not sign anywhere. There were photos. I don't have them. There was a video. I don't have the same. I know Mureithi. He was present. He is a 1st cousin of the deceased. 2018, I was present when 10,000/= was paid. I participated in the function. I only said I know him. I don't know the deceased wife who died in 2015. I did not participate in funeral. I was in Nairobi. She went for the funeral. Mary is my friend. She stays at Wachira's home. The deceased had a plot. She has a house at Wamiru. She lives there."

[13] In re-examination, she stated that, *"I am an employee of the Ollin Sacco. According to the card, Benjamin witnessed it. It is not a requirement to accompany the nomination. The nomination card is by Stanley the (deceased). He indicate Mary Wanjiru ay the wife. The 1st letter the chief wrote. He recognized my mother, myself and sister on the 2nd letter. He indicated both. He retracted the letter after the dispute in Ollin Sacco. He recognized me as a daughter. The receipts have names of the student nor the parent. I have grown up in my father's life. The deceased started participating in my college life. The person who received dowry was my mum's brothers. Delick and Susan are entitled to file for succession. I did not file a caveat or protest. My mother did. I authorized my mum. It was verbal. MFI 2. I did authorize. There is no signature. It is to Ollin Sacco. It is not addressed to the Court. My sister has signed. I am aware the chief revoked the 1st letter. I did not protest. There was another letter by the chief. I have not protested at the chief office. I did not participate in the funeral. My employer declined. I have no proof. I only lived with him only for a few days. Wachira, my father died and, my mum remarried. I call Wawira's name as my name. The nomination card. I am not claiming share. I am claiming as a dependant. I am supporting my mother. 30th October 2020, I was at Crystal Park in Nairobi. I was aware of the meeting of the elders. I did not attend. I was working.*

My mother was a wife. I disagree with the elders. I have uncle name Muchira Weru Karuru. He is a brother to Geoffrey Wachira and my uncle. He was blind. Catherine It respondent who was a sister was supporting. I took care of him at Kerugoya Medical. I am not Dr. Musyoka. MF1 11 (a) and (b), I am a nurse but not Mary. I received him when I was a nurse on duty. 2nd and 3rd respondents are children of the deceased. I am not a stranger. I came to know him when he had a dispute at Ollin Sacco. There is nothing else that proof he took care of me. He died in 2020 March. I am not sure of the month. I was not ready. I was not featured in the programme. I did not feature in the funeral. I was working far from home. Shirley is adjacent on the right side. Henry Munene on the top side. I was a dependent to the deceased. He paid my fees from 2019. On the second receipt, there is no name of the deceased. It shouldn't make. Even at the bank, there is no indication. It only shows the name of the student. It only read my name. He was a secretary. He told me so. I don't know if he was a senior clerical officer. I know Catherine the 1st respondent. My mother was not the house help. She bought food stuff as a parent. I have grown and lived in his property where we have built. My mother got married to Stanley Kiiragu in 2013. The ngurario was done in 2019. In 2013, it was come we stay. I am aware it was not a marriage. My mother is a resident of Karaini, Kariko Sub-location. The deceased is resident in Karaini. My mother came back home when Stanley died. She hasn't been a resident in Wachira's property. I used to visit my mother. Mr. Kamori a businessman was a neighbour. She was cooking, washing and going and sometime she used stay. She was going to check the properties and Wachira and came back. I didn't Stanley taking care of Lucy and Joyce Nyawira. They were not staying from home with him. Stanley died in 2020. I was summoned at D.C.I. There is on-going investigation. I went to the D.C.I voluntarily. Mary was summoned. Mary, Lucy, Joyce did not participate in the funeral. Mary was not recognized. She did object in the funeral. Joyce and Lucy attended the funeral. The plot is there. None of us stay there. Before he died, he was lost for 2 months. Catherine his sister found him. I was paying rent to Mary. He did not disclose why I was to pay Mary. I was paying rent. I was not being issued with receipts. That had been segnetuted at the... I would not know the family secrets. The 300/= was paying, Mrs Kamori her aunt was receiving the rent. He told me Mary was the wife. I have known them from 2014. Staying as husband and wife. There were no family members from the deceased family. He said they had abandoned him. He had some

friends, a lady and 2 men. Muthoni and-Gladys attended. There was Zacharia. We did not sign anywhere about the money. I have never seen Susan and Delick. They were not staying there.”

[14] **AW3 Lucy Nyaguthie** testified that, “I stay in Kerugoya am a Nurse by profession. I recorded statement dated 7th July, 21. I did not know his wife Lucy. I did not know his children Susan and Derrick The house was 3 bedroom. The deceased was staying in 2 bedroom with a bed and seats. I was paying 300 rent. I have no receipt book, we just spoke. I am a farmer. I witnessed the dowry being paid at.....Nyawira. I wasn't there when dowry was paid. Mary was the wife. I was paying Mary rent. It was 2019 when it was paid. Mary was staying 1 Kilometre away. She used to come and go. Dr. Musyoka was an employee. He was under supervision of the superintendent.”

[15] On cross examination, she stated that, “My father was called Geoffrey Wachira Keiroro. According to him Benjamin witnessed it. It is not required to accompany the nomination.”

[16] **AW4 Francis Mugendi** adopted his witness statement dated 7th July 2021 as his evidence in chief.

[17] On cross examination, he stated that, “I am Francis Bundi. Stanley was my landlord at Karaini Village in his plot.”

[18] In re-examination, he stated that, “I am not Dr. Musyoka. I have not been sent by Dr. Musyoka. I have authority letter from the Superintendent. I am not ruler. Dr. Musyoka has not authorized me. The discharge summary does not state the family member. The Superintendent received summary. He is the administrator. He has certified the discharge summary. I am an employee of Kerugoya Medical Centre.”

[19] **AW5 Dr. Allan Kuyu Itotia** testified that, “I am Medical officer at Kerugoya Medical Centre. I am a holder of Bachelor in Medicine and Surgery. I am here on behalf of the Superintend. I was to produce a discharge summary dated 14th May 2020. The patient was Stanley Mwangi Kiraya. He was treated there. I produce the discharge summary as Plaintiff Exhibit 11 A. We did not state the person who brought the patient. I know that at Ollin Sacco, Stanley paid for Lucy Wachira for college fees. I can't know the name of the college. I don't have the receipts. Stanley received dowry for the daughter. I was present. I have no photos, no minutes.”

[20] In re-examination, he stated that, *“Photos are not a must. There were others present on the dowry ceremony. It is not minuted. She was staying at Muchira. Then upon marriage, she was staying with Stanley. Mary’s children are for Wachira. Dowry was paid by Stanley for Mary. I was there when it was paid. I was present as a cousin. 30,000/= was paid. It was not written anywhere. The photos got lost. There were many elders. I was there. There are some who are alive. I don’t know which clan Mary comes from. He stayed with the deceased for 2 -3 years. That is what I know. I don’t know he had a wife called Lucy. I don’t know about the marriage certificate. Susan and Delick.”*

[21] **AW6 Samuel Mureithi**, adopted his statement dated 7th July 2021 as his evidence in chief.

[22] On cross examination, he stated that, *“Mary Wanjiru is my maternal cousin. She was married to Geoffrey Wachira. She was staying at Wachira. Subsequently, she got married. She went back to stay with Wachira. I was not aware of the 99334 Ha. My mother had filed a caveat. I am entitled for challenging the grant. He has other shares. In 2013, when my mother started staying with the deceased.”*

[23] **PW1 Catherine Nyawira Mwaniki**, adopted a replying affidavit sworn on 24th May 2021 as her evidence in chief. She went on to state that, *“I was appointed as administrator. Document 4. The members who attended No. 14. She attended the meeting. She has authority. She attended the meeting for PMF 1, 5, and 6. I was not the maker. I attended the meeting. These are the minutes. The deceased was my brother. I am the eldest.”*

[24] On cross examination, she stated that, *“The deceased had a wife. In 2015, when the wife died, they were living together. She was buried in the father’s land. The children were brought up at Kariani and Narumoru. The mother died in 2015. She was married in 1998. Susan is the oldest. She was born in 1992. Delick was born in 1995. They had a child who died, called Marige. He died is an infant. I have birth certificate for Delick. For Susan, I don’t have the birth certificate. I cannot confirm if she was sired by the deceased. We attached the birth certificates. She was buried at her father’s land so she gets land. Stanley was living on our mother’s land. She was living with the deceased at Narumuru at the time of death. Marige was buried at Narumoru. It is not true she was buried at the mother’s land. It is not true that the deceased and the wife separated. He used the mother’s name as she was attached to the other. Susan and Delick were brought*

up in Kariani. It is not true they were brought up at the maternal grandmother's land. They are living at the grandmother's land. They are attending to the land. I don't know when they went to their other's land. They live in Mutuma. Susan is married. They live at Mutuma. Chief letter dated 13th October 2020. The 3rd paragraph. The Chief confirmed they don't live in the location but they stay in Karaini. I can't confirm if the chief lied. The house which was destroyed was one room. The deceased was living there. The.....is my mother's house. The uncle is Francis. He constructed there. Delick was born in 1998. He was young. He didn't have his own Thingira. The deceased was permanently in Naromoru. He reached Class 7. He was a Senior Clerical officer at Naromoru. I have nothing to show he was educating the two. He could pay direct. He was suffering from depression at some point. That was in 2020. We were visiting him when he became blind. When he attempted suicide, Mary Wanjiru took him to hospital. Mary did not take him as a spouse. The hospital called that night. I went in the morning. Mary was not in the house at that time. She was called by Bundi a tenant. It was deleted as a spouse. The evidence I don't have. I did not attend his dowry payment, however comes his relatives were not involved. We had not deserted him. Even 2019, when his salary was stopped, we assisted him. She would have his personal documents as she could access them. They were in the house. I was present during the Ollin Sacco dispute. D.C.I. went to Wachira's home. The Police did not find out that she had committed any fraud. The Chief's letter acknowledged a beneficiary. The Officer reported the case to the Chief. It is still pending. I can't explain why my brother nominated her. It could have been by force. I was present when he nominee card was done. I raised my objection. We went and reported to chief. I went to D.C:I.O's office. We could not raise the issue. I did not cite her. She was a stranger. My brother had beneficiaries. I confirmed the grant. I submitted the documents required for confirmation before lapse of 6 months. Susan Wanjiru was ailing. She had epilepsy. It was there before. I did not bring any medical report. It is not true I wanted to defraud Mary. Mary had access to the deceased documents. She was a maid. The children did not have access. Susan reached Form 4. The son dropped out as he wished so. Even her mother could pay fees. At Kerugoya Medical, there was no taking care of him. She was working there. My brother became blind less than 10 years. I would sit him. I never collided with the wife to exclude her.”

[25] In re-examination, she stated that, *“At the time of the death of Lucy, they were together with the deceased. The children were brought in Karaini and Naromouru. We had a government house. Susan and Catherine are children of Stanley. The letter from the chief dated 13th October 2020. I was present. It was because she had reference the.....or as my brother’s children. It was not the final letter. The house was one room not 2. It had even holes. Delick was not staying with the father. It is not a must to stay with the father. I am not custodian on the fees receipts. Stanley had depression. He was blind for less than 10 years. He was disabled from polio attack. Mary was servant in the deceased home. She was not living in that house. I was not involved in dowry payment. We were in a good relationship with my brother. The D.C.I visited Wachira’s home and Stanley when nominee card was done. I was not an administrator. I am not a beneficiary. I did not sign anywhere. Mary was a stranger to the family. I did confirm the certificate carefully. I certified the.....document. She is still epileptic. I have not colluded with the chief to disinherit Mary.”*

[26] **PW2 Rose Mary Nyaguthii**, the Chief, Kariru Location, Kirinyaga County, testified that, *“I have been a Chief for 3 years. I know Stanley Mwangi Kiragu. He was staying in my jurisdiction. We interacted. I wrote the letter dated 5th October 2020. Mary Wanjiru came to my office claiming to be his wife. I listed Mary Wanjiru Wachira. Joyce Nyawira, 1st – 3rd respondents. I also wrote a letter dated 13th October 2020, Plaintiff’s exhibit. It was addressed to Branch Manager Ollin Sacco. It was about money the deceased had kept in the bank. I listed Mary Wanjiru, Lucy Wanjohi, Joyce Wanjiru, Sicily Wanjiru, Delick Nyaga. I consulted village elders and church. I revoked all my earlier letters. I wrote the true one being Susan Wanjiru Wanjohi and Delick Nyaga Wangithi. Letter dated 2nd November 2020. I produce it. It is my letter. First, I was mislead. Delick and Susan are true beneficiaries. Mary is Wachira’s wife. Mary reside in Wachira’s property.”*

[27] On cross examination, she stated that, *“I have been a Chief for 3 years. I have known the family as a Chief for 3 years though I stay in the area knew from before. Mary Wanjiru mislead me. I am a chief to conduct all diligence when issuing letter dated 1st October 2020. I was mislead. I had not consulted on the letter dated 13th October 2020. I had not done my through investigations. There was a complain. I issued without due diligence. I did my own investigations. When I was doing investigations there was a*

meeting held and both the families were present. The Assistant chief presided over. Mary Wanjiru is a resident of my locality. She live in Wachira's residence. Wamiru is deceased. She was living with the deceased as a househelp. She used to take care of him. She would not have 2 husbands. At the time of Stanley's death, Mary was living at her husband's home."

[28] In re-examination, she stated that, "Mary was living at her husband's home. The husband was Wachira. When I did first letter, I had not consulted Clan Elders, Church and family. On the last letter, I had consulted the family clan and church."

[29] **PW3 Edwin Munene Mutongu** adopted his statement dated 2nd August 2021 as his evidence in chief.

[30] On cross examination, he stated that, "I know Stanley from birth. Stanley was my immediate neighbour. I was to visit him. He was my student. Mary Wanjiru is known to me. She was a househelp. She used to cook for him. Stanley used to come for holiday or leave. He had not retired. He was a clerk at Naromoru. I was told Mary used to cook for him. She was being paid a wage. I trusted the children. Stanley never married Mary Wanjiru. If there was a ngurario, I would have known."

[31] In re-examination, he stated that, "I did not know Mary as wife. The one known is Susan. Mary was not a wife to Stanley. If there was ngurario, I would have known."

[32] **PW4 Delick Nyaga Wangithi** adopted his witness statement filed on 5th July 2021 as his evidence in chief.

[33] On cross examination, he stated that, "I stay in Mutoma at my mother's. She was given land. The deceased was buried in the mother's land. I was born at my father's. I have a birth certificate. I am Delick Wangithi. The birth certificate has both parents' names. My dad was a clerk at the D.C. offices. I reached Class 7. He educated me until Class 7. I have no document. It was a public school. I reached Class 7. I voluntarily left school. I was in a public school. I was born in Karoini. He was working in Narumoru. I took my Identity Card here. I know Mary Wanjiru. She was a maid. I have no proof of her being paid Ksh. 700/= . My mother was.....in that name. My father was buried in a lot, family land. My mother had land at her parent's home. She was not in good terms with the in-laws. There are some properties I don't know. He came these side in January 2020. My father employed Mary as a maid. The other maid was Mama Nyaga. There was no other maid. Bundi had rented a house. He was not an employee. We did not hide the

burial. It was done twice.....Karani and John Kamori. He had property at Vilion.....I don't have the minutes. The 3rd born as buried in Narumoru my father's land. He sold the land. I don't know when he sold. I was a young man. The deceased is my dad. In the birth certificate, the name is my dad. My dad educated me. Mary was an employee. We were never involved in her marriage. Bundi testified that he was an employee. We did not block them from participating in the burial.”

[34] **PW5 Wilson Munene** adopted his witness statement dated 5/7/2021 as his evidence in chief.

[35] On cross examination, he stated that, *“Stanley had married Lucy Wagumi Wachira. It was about 20 years ago. When the customary marriage was done, my uncle and mother were present....was alone. The deceased is my cousin. I witnessed the same. The minutes are there. My uncle can avail them. I witnessed the same. Lucy died in 2015. She was buried in Mutumu area at her land. They had two parcels of land. The father had given her land. She was buried in her home. The deceased had a plot. It is there he was buried on the said plot. The plot belongs to Stanley and her 2 siblings. Its for their house. He wasn't staying on the land. He used to visit the land. It is a small plot. It was a family decision. The deceased had had Delick, son and Macharia who died. He was a civil servant. He buried his child in Narumoru. Delick stays in that land at Mutuma. It is his land not the grand-mother. I know it is his. The grandmother died. The land is subdivided. Everyone got their portion. The deceased was sick. He was diabetic and blind. He used to employ people to assist him. Mary Wanjiru Wawira was a maid. The rest I did not know. He was staying in Narumoru and later came at Kiriani. I was used to see her working for the deceased. I don't know other employees. Bundi was a tenant. No one is staying there. We sat at Chief offices. Mary Wanjiru said she is not a wife. She was lying all the time yet she was not a wife. The elders met. The evidence is on the file filed on 30th November 2021. She was given audience. We were many elders. Wilson Mbungu was present. He was staying at the government house. He had land in Narumoru. I don't know where he...was.”*

[36] In re-examination, he stated that, *“The marriage was 20 years away. I attended and witnessed the customary marriage. The plot was small, he had 2 more siblings. Mary wambui was an employee because of the deceased condition. Bundi was a tenant.”*

[37] **PW6 Wilson Kibugi Mwangi** adopted his witness statement dated 5/7/2021 as his evidence in chief.

[38] On cross examination, he stated that, *“I am retired Senior Chief of Nyagati. I reside there. I am a brother in-law to the deceased. I married his only sister Catherine. I married Catherine first traditionally then church. I paid dowry. The record keeping happens. The dowry is specified in the record. Lucy Wangithi. I am not aware of her marriage. She was not married. They had 2 children by Lucy Wangithi. One son died. It was a young child. I don’t know where he was buried. Catherine testified. My wife. She is an accountant. I was present in court. I was married long before. He was buried in Narumoru. Catherine said the son was buried at Mutumu. Mary wasn’t married to the deceased. The deceased supported the children. I have no evidence to support family matters with receipts. I buried the deceased at Karaini. The mother to Stanley was buried at Karini. The area....a village plot. It has no legal documents. Lucy Wangithi was buried at Mutuma. She was buried on the land. It was initially her mother’s land. I have 3 sons. They bear my names. Delick Nyaga Wangithi and Susan Wanjira Wanjohi. They don’t bear the name of the deceased. He was paralyzed in the early years of polio 1963 to 1964. He went blind 10 years back. He was an employed man. He had money to employ servants. I have. We employed Mary Wawira. The evidence of giving birth in marriage. I have no proof of biological father. The applicants obtained the letter from the chief unlawfully. The letters were not genuine. I introduced him to Ollin Sacco. The nominee was Mary Wanjiru, wife 100%. On her village plot. Delick lives there. It is a temporary construction. From Nyangati to Karaini is around 15 Km. It is far from Kerugoya to Kutus. I may be aware of what transpired daily. He supports the children. I have photos in my house as I am interested. All I know is they lived together. I have no photos.”*

[39] In re-examination, he stated that, *“I recorded my statement. In paragraph 3 of the same, Lucy was married to Stanley. The deceased supported his children by giving money when they needed it. It is not mandatory for children to have the name of the deceased. Delick bears the name of the mother. Mary Wanjiru Wawira was employed. I know so as my brother in-law informed me as such and he said he pays 500 and 200. In the nominee card, Mary Wanjira had no thumb prints. Certificate been produced. The deceased lived alone. Mary Wanjiru lived in his me.”*

Submissions

[40] The Appellants cite **Selle and Another v Associated Motor Boat Company Ltd & Others [1968] EA 123**, on the duty of the first appellate court. They urge that the intention was clear that the deceased was performing a marriage ceremony to the extent of part-payment of the bride price, notwithstanding the failure to slaughter a ram, and cite **Priscilla Waruguru Gathigo v Virginia Kanugu Gathigo [2004] eKLR and Eliud Maina Mwangi v Margaret Wanjiru Gachangi [2011] eKLR**.

[41] The Respondents urge that the 1st Appellant was not a wife of the deceased but a house help assisting the deceased due to his physical and mental incapacitation. They urge that no evidence was tendered to corroborate that there was a kikuyu customary marriage between the 1st Appellant and the deceased, and cite **Estate of Joseph Gathigo (Deceased) Priscilla Waruguru Gathigo v Virginia Kanugu Gathigo (2004) eKLR, Hortensiah Wanjiku Yawe v The Public Trustees 91976) eKLR and Beatrice Ciamutua Rugamba v Fredrick Nkari Mutegi & Others (2016) eKLR**.

Analysis and Determination

[42] From the grounds of appeal, the issue for determination is whether grant was obtained by concealment of the 1st Appellant's identity as a wife of the deceased.

[43] It is also clear that the appellant had the burden of proof under sections 107-109 of the Evidence Act. In **Kimani Gituanja v Jane Njoki Gituanja [1983] eKLR**, the Court of Appeal (Chesoni Ag. JA.) observed that:

“The existence of a marriage is a matter of fact which is proved with evidence.”

[44] Similarly, in **Eliud Maina Mwangi v Margaret Wanjiru Gachangi (2013) eKLR**, cited by the Appellants, it was held that:

“Specifically on proof of a customary marriage, this Court in Gituanja vs Gituanja (1983) KLR 575, held that the existence of such a marriage is a matter of fact which is proved with evidence. In that case the court found that the evidence adduced had proved a valid marriage under Kikuyu customary laws as was evidenced by the slaughter of the “ngurario”.”

[45] The 1st Appellant testified that, ***“The deceased was my husband under Kikuyu customs. In 2018 July he brought 2 crates of Soda for introduction ceremony. He paid Kshs 30,000/-. He was asked for a panga and Jacket. He was asked for a He goat, Ram,***

Bull and a Cow. He paid Kshs 30,000/- in 20th August, 2018 he, visited our home and brought Kshs 10,000/- for He Goat, Sword, in the 1st meeting, he was Francish Mbundi, Zacharia Karimi deceased, Muthoni Njoki, Jane Kariuani, our side was presented by Munyunyiu, Muriuki summoned my sister and one of my daughter this was in July 2018, Jane Karuana brought him on the 2nd time. On my side it was my parent and sister. We did not slaughter goat but he gave money. I was never a house help I was his wife. He had introduced me as the wife. They never used to come and visit. He was sick. He was paralyzed waist downwards. From 2013 I was his wife. He was also blind. In the eulogy am not mentioned. I attended the funeral. Wachira was my husband earlier and he died in 2005.” On thorough cross examination, she stated that, “Wachira is the name my deceased husband, Geoffrey Wachira. Lucy Waguthii Wachira and Joyce Nyaira Wanjira are children of Geoffrey Wachira. He was my husband July, 2018. There are no photos. There were no minutes. The deceased was not blind. When I married him he was seeing he had vision he stopped seeing in 2018. When the dowry was paid he wasn’t seeing. He died in June, 20. I didn’t participate they removed me. I didn’t go to the Chief or Court. I only got to know the day of the burial. I did not object anywhere. I attended the funeral. I was not recognized. He never introduced me to anybody in his family.”

[46] AW2 testified that, “The Nomination of Mary Wanjiru Wamiru has no identification number. The Nominee Card has the thumb print. There is no certificate of thumbprint. No Affidavit indicating, he had been explained to do the nomination. The person, who placed the thumbprint was blind. It is done outside the Sacco. It was done at home. It only brought to office. I witnessed the payment of dowry in 2018. I was present. I know the deceased. Stanley was not blind. He was seeing. He paid the dowry price Ksh. 30,000=. I have no document to show dowry was paid. I did not participate in funeral.”

[47] AW5 testified that, “Stanley paid for Lucy Wachira for college fees. I can’t know the name of the college. I don’t have the receipts. Stanley received dowry for the daughter. I was present. I have no photos, no minutes.” In re-examination, he stated that, “Photos are not a must. Dowry was paid by Stanley for Mary. I was there when it was paid. I was present as a cousin. 30,000/= was paid. It was not written anywhere.”

[48] PW1, PW2, PW3, PW4 and PW5 were categorical that the 1st Appellant was not a wife of the deceased.

[49] The 1st Respondent stated that, **“Mary was servant in the deceased home. Mary was a stranger to the family.”**

[50] PW2, the Chief, Kariru Location, Kirinyaga County, testified that, **“I revoked all my earlier letters. I wrote the true one being Susan Wanjiru Wanjohi and Delick Nyaga Wangithi. Letter dated 2nd November 2020. Delick and Susan are true beneficiaries. Mary is Wachira’s wife. Mary reside in Wachira’s property.”** On cross examination, she stated that, **“Mary Wanjiru is a resident of my locality. She live in Wachira’s residence. She was living with the deceased as a househelp. She used to take care of him. She would not have 2 husbands. At the time of Stanley’s death, Mary was living at her husband’s home.”**

[51] PW3 stated that, **“Stanley was my immediate neighbour. Mary Wanjiru is known to me. She was a househelp. She used to cook for him. Stanley never married Mary Wanjiru. If there was a ngurario, I would have known.”**

[52] The 3rd Respondent stated that, **“I know Mary Wanjiru. She was a maid. My father employed Mary as a maid.”**

[53] PW5 testified that, **“The deceased was sick. He was diabetic and blind. He used to employ people to assist him. Mary Wanjiru Wawira was a maid.”**

[54] The 1st Appellant’s testimony that she was a wife of the deceased was strenuously refuted by the Respondents. Whereas the 1st Appellant and her witnesses maintained that dowry was paid, they could not produce any minutes of any ceremony, photographs and/or any other documentation in support thereof. There was no evidence that a ram was not slaughtered as part of the purported dowry celebration in accordance with Kikuyu culture.

[55] In **re Estate of Geoffrey Mugwe Kamau (Succession Cause 113 of 2015) [2023] KEHC 21814 (KLR) (10 August 2023) (Judgment)**, the Court (Nyakundi J.) observed properly that:

“It is trite law that he who alleges must prove. For one to prove a civil marriage, production of a marriage certificate shall suffice. If one claims to have been married via customary law, the onus is upon them to prove the

same. In Njoki -vs- Mathara and Others Civil Appeal No. 71 of 1989 (UR),

Kneller J. A held that:

“(i) The onus of proving a customary marriage is on the party who claims it.

(ii) The standard of proof is the usual one for civil action, balance of probabilities.

(iii) Evidence as to the formalities required for a customary law marriage must be proved to the above standard.”

[56] In the face of the respondents’ evidence that the appellant was a house-help of the Deceased, the appellant was required to produce cogent evidence of the performance of the marriage ceremony and the Kikuyu Customary Law marriage legal element of *Ngurario* for the Court, on a balance of probabilities, to accept that it was more probable than not that she was married to the deceased.

[57] The Court finds that the evidence adduced by the 1st Appellant fell short of establishing, on a balance of probabilities, that she was a wife or a dependant of the deceased herein, within the meaning of section 29 of the Law of Succession Act.

[58] Consequently, the Court finds no basis to interfere with the trial court’s determination in its judgment.

ORDERS

[59] Accordingly, for the reasons set out above, the Court finds that the appeal is without merit and it is dismissed.

[60] There shall be no orders as to costs in the appeal.

Orders accordingly.

DATED AND DELIVERED THIS 30TH DAY OF APRIL 2026.

EDWARD M. MURIITHI

JUDGE

APPEARANCES:

Mr. G. Kahiga of Kiguru Kahigah & Co. Advocates for the Appellant.

Mr. Kagio of Maina Kagio & Co. Advocates for Respondents.