

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAKURU
SUCCESSION CAUSE NO. 178 OF 1999
IN THE MATTER OF THE ESTATE OF PETER KARIUKI
GICHEGE(DECEASED)

JOYCE NYAMBURA KARIUKI.....PETITIONER

AND

MARY NYAMBURA GICHENGE.....OBJECTOR

JUDGMENT

1. The subject of these proceedings is the Estate of Peter Kariuki Gichege (hereinafter "the Deceased"), who died intestate on 12th February 1999.
2. On 7th April 1999, Joyce Nyambura (the Petitioner) petitioned this Court for Letters of Administration Intestate, premised on her claimed status as the surviving widow of the Deceased. Following the requisite publication in the Kenya Gazette on 25th June 1999, this Court issued a Grant of Letters of Administration Intestate to the Petitioner on 23rd September 1999, thereby appointing her as the sole administrator of the Estate.
3. The validity of the said Grant was subsequently challenged by Mary Nyambura Gichege, the mother of the Deceased and the Objector herein. By way of a Notice of Motion dated 15th October 1999, the Objector sought the revocation of the Grant issued to the Petitioner, contending that the Petitioner was a stranger to the Estate and had never been lawfully wedded to the Deceased.
4. Following an interlocutory period characterised by various applications, the Objector filed a Cross-Petition on 20th February 2001, seeking to be appointed as the personal representative of the Estate. Consequently, the Court ordered the issuance of a fresh joint Grant in the names of both the

Petitioner and the Objector. This joint Grant was duly issued on 8th October 2018.

5. On 15th October 2018, the Petitioner moved the Court by way of Summons for Confirmation of Grant, proposing that the entirety of the estate property vest in her, to be held in trust for herself and her three children: Emma Nyambura, Simon Mungai, and James Kariithi.
6. This proposal was met with an Affidavit of Protest dated 1st April 2019, filed by Mary Nyambura Gichege. The Objector averred that she is the one who purchased the property described as Title Reference No. 52999, I.R. No. 31718/302, LR No. 12250/2016, on 1st September 1977 and registered it in the name of the Deceased (her son) while he was a minor of fourteen years. Therefore, the same is her own property and should not be listed as Estate property.
7. The Petitioner subsequently filed an Amended Summons for Confirmation of Grant on 29th June 2023, reiterating the distribution proposal outlined in the initial Summons of 2018 to herself and her children alone. It is this Amended Summons, alongside the Protestant's objections, that was subjected to a hearing through viva voce evidence.

Objector's case

8. The Objector, **Mary Nyambura Gichege (PW1)**, testified that she is the mother of the deceased, Peter Kariuki Gichege, who was born in 1963 and died on 12th February 1999. She stated that she resides in Free Area Estate, where she has lived for over twenty years, and that the deceased was her son from her marriage to the late Mungai Kariuki. She further indicated that the deceased had one sibling, Susanne Wairimu.
9. It was her evidence that she maintained a close relationship with the deceased throughout his lifetime and played a central role in his economic

life. She testified that she operated a business dealing in cereals and later a retail shop, in which the deceased actively assisted her after leaving school. According to her, she supported him financially, facilitated his acquisition of driving skills, and assisted him in acquiring a motor vehicle, which marked the beginning of his involvement in the matatu business. She maintained that the assets attributed to the deceased were substantially developed through her efforts and support.

10. The Objector denied knowledge of any marriage between the deceased and the Petitioner, Joyce Nyambura. She testified that under Kikuyu customary law, she would have been involved in or at least informed of any marriage negotiations, including dowry discussions. She stated that no such process ever took place and that the deceased never introduced the Petitioner to her as a wife. Although she acknowledged that the deceased had a separate residence, she stated that she did not know who, if anyone, resided with him there.
11. She further testified that she was not aware of any children sired by the deceased with the Petitioner. Referring to birth certificates produced in court, she pointed out that they were issued after the deceased's death and maintained that she had never been informed of the existence of such children during his lifetime.
12. On the issue of the deceased's illness, the Objector testified that he was sick for approximately three years before his death, during which period she personally took care of him. She stated that she attended to his daily needs, took him to the hospital, and ensured he received treatment, particularly at Valley Hospital in Nakuru. She added that her daughter Susanne and another relative assisted in caring for him, and that during this time, she never saw the Petitioner visit or participate in his care.

13. With regard to the burial arrangements, she testified that she initially obtained the burial permit and took charge of the deceased's body. However, she alleged that her brother, together with the Petitioner and others, took the body back to the mortuary without her consent and made separate burial arrangements. Despite this, she attended the burial to ensure that her son was laid to rest. She further stated that she settled the hospital bills and later applied for and obtained the death certificate, expressing surprise upon learning that another death certificate had been issued.
14. Finally, the Objector testified that she lodged the present objection upon learning that the Petitioner had petitioned for letters of administration. She maintained that the deceased's properties, though registered in his name, were in fact acquired through her efforts and therefore belong to her. She listed several assets, including plots in Free Area, land in Ndege Farm and Kiambogo/Mirorini, as well as multiple motor vehicles, and provided their approximate values. She disputed the Petitioner's claim as a widow or beneficiary of the estate and asserted her own entitlement to the properties in question.

Petitioner case

15. The Petitioner, **Joyce Nyambura Kariuki**, testified that she resides in Njoro and is a businesswoman. She adopted her witness statement dated 15th May 2017 and her further statement dated 10th July 2023. She also relied on her bundle of documents dated 15th May 2017, 14th November 2018, 23rd February 2021 and 11th July 2022, which were produced and marked as Exhibits 1-15 respectively.
16. She urged the Court to distribute the deceased's estate in accordance with the Amended Summons for Confirmation of Grant dated 29th June 2023. She testified that the Objector is her mother-in-law and the mother of the

deceased. It was her evidence that she was married to the deceased sometime in 1986 under Kikuyu customary law, and that their union was blessed with three children, namely Nyambura Kariuki, Mungai Kariuki and Kariithi Kariuki.

17. She testified that LR No. 2250/216 was purchased in 1990 and later transferred on 20th June 1991, while Dundori/Lanet Block 2/109 (Ndege Farm) was acquired on 24th August 1989 and served as their matrimonial home. She stated, however, that she no longer resides in the said home, having allegedly been chased away by the Objector on the grounds that she was not the deceased's wife, and that the house was subsequently demolished. In support, she produced photographs marked as Exhibits 11 and 12.
18. She further testified that following her husband's death, the Objector began collecting rent from the rental properties without providing for her or the children, which prompted her to move to court. She stated that by an order dated 10th April 2001, Justice Odera directed that rental proceeds be deposited with Mungai Commercial Agencies pending determination of the case, though the said orders were never complied with.
19. Further, she testified that the deceased owned several motor vehicles, although she was unaware of their whereabouts. She maintained that she underwent a valid Kikuyu customary marriage, having satisfied all the requisite steps, including notifying her parents, a formal visit to confirm intention to pay dowry, and payment of dowry in the sum of Kshs. 15,000. She stated that the dowry payment was made in the presence of Njuguna Gichege (the deceased's uncle and the Objector's brother), Susan Wairimu, her mother-in-law, and other witnesses.

20. She explained that although Njuguna Gichege had initially intended to testify on her behalf, he passed away and was therefore replaced by Joseph Karanja Gichege. She therefore prayed that she be granted the deceased's estate, and she undertook to take care of her mother-in-law by providing for her maintenance.
21. On cross-examination by Mr. Ikua, she told the court that her National Identity Card bears the name Joyce Nyambura only, and that it was issued on 6th February 2013, after the deceased's death. She confirmed that she had attempted to register a new identity card in the deceased's name after losing her previous one, but this was declined by the Registrar. She further confirmed that her current identity card was obtained after commencement of the succession proceedings.
22. Further, she told the court that Joseph Karanja Gichege was present during the three visits to her parents' home for dowry negotiations and marriage ceremonies. She stated that she met the deceased in 1982, married him in 1986, and lived together until 1996 in a rental house in Free Area. She added that her mother-in-law also lived in a separate rental house. She testified that in 1996, due to marital differences, she moved out and returned to her parents' home in Njoro, leaving the children with the deceased. At the time, the Objector resided in Subukia. She further stated that in 1998, the children joined her in Njoro, and that when the deceased fell ill in 1997, she returned to take care of him.
23. She admitted that there was no documentary evidence to show that she contributed to the acquisition of the properties and that none of the properties were registered in her name. She also confirmed that she did not have logbooks for the motor vehicles. She further acknowledged that the

- birth certificates for all three children were obtained after the death of the deceased.
24. She testified that she was in possession of a death certificate for the deceased and that the Objector had also obtained another one. She stated that she used a copy of the deceased's identity card, a Chief's letter, and a burial permit to obtain the death certificate. She further testified that burial meetings were held at Lanet Country Lodge and that she was unaware of any meetings held at the Objector's home. She confirmed that the burial preparation meeting was attended by the deceased's uncles, but not by the Objector or the deceased's siblings.
 25. She also confirmed that the burial programme was prepared by the deceased's uncle in the absence of the Objector. Although she maintained that the Objector was notified, she conceded that she was not involved in the preparations. She further confirmed that she did not pay any hospital bills and did not know who settled them. She reiterated that the deceased used to collect rent from Plot No. 216 but she did not know who collected rent after his death. She stated that her intention was not to appropriate the deceased's estate.
 26. On re-examination by her counsel, she told the court that all the properties were acquired before 1999. She specified that Dundori/Lanet Block 2/109 was acquired on 28th August 1989, while LR No. 2250/216 was acquired on 20th June 1991, both being registered in the deceased's name. She further testified that she was not on speaking terms with her mother-in-law for approximately three months during the burial period, though she confirmed that her name appeared in the burial programme.
 27. The Petitioner's second witness was **Joseph Karanja Gichege**. He adopted his witness statement dated 10th February 2021 and testified that the

deceased was his nephew and that the husband of Joyce Nyambura (the Petitioner). He stated that dowry in the sum of Kshs 15,000 was paid to the Petitioner's parents, and explained that during the dowry ceremony, his younger brother, the late **Joseph Njuguna Gichege**, represented him as he was away in Mombasa at the time. He asserted that Joyce Nyambura is the deceased's wife, while Mary Nyambura, (the Objector), is the deceased's mother and his own sister. He further asserted that the deceased had three children, namely Nyambura Kariuki, Mungai Kariuki and Kariithi Kariuki. He added that he is the one who gave the Petitioner the deceased's death certificate.

28. On cross-examination, he testified that he obtained the death certificate of Joseph Njuguna Gichege and handed it to his wife. He clarified that he did not obtain the death certificate of the deceased herein, stating that it was the Objector, Mary Nyambura, who obtained it. He nevertheless reiterated that he participated in the dowry process and that a sum of Kshs 15,000 was paid as dowry for the Petitioner.

Objector's Submissions

29. She submitted that the Petitioner's claim to the estate is founded on her assertion of being the deceased's wife and the mother of his children, a claim she categorically denies by stating her son lived with her until his death as an unmarried man with no offspring. Her major argument rests on the timing of the birth certificates for the alleged children, which were all obtained in late February and early March of 1999, shortly after the deceased's death on 12th February, 1999. The Objector contends that because the father was already dead, the information in these documents must have been fabricated by the Petitioner to mislead the court and unlawfully obtain property.

30. The integrity of the filings is further challenged by the existence of two conflicting death certificates. The Objector argues her certificate (No. 505061) is the legitimate one because she possessed and presented the deceased's original Identity Card and burial permit, whereas the Petitioner admitted she did not have these required original documents when obtaining her version (No. 505230). This discrepancy leads the Objector to characterize the Petitioner's documentation as suspect and unlawfully obtained.
31. Regarding the deceased's assets, the Objector submits that the Petitioner's ignorance of certain properties proves that she was not the wife. For instance, that the Petitioner failed to include a property (LR No. 12250/2016) that the Objector had purchased and registered in the deceased's name during his childhood. Furthermore, the Petitioner did not provide titles for several land parcels she claimed existed and did she did not provide logbooks for the motor vehicles she listed. The Objector points out that the Petitioner only updated her list of assets five years after her original filing, and only after the Objector had disclosed the properties in these proceedings.
32. The issue of dependency and the validity of the marriage under Kikuyu Customary Law are also heavily disputed. The Objector notes that the Petitioner lived in Njoro while the deceased was under his mother's care in Nakuru during a long illness, and that the Petitioner failed to provide evidence of financial support or school fee payments made by the deceased.
33. She submits that while the Petitioner claimed a dowry payment was made in 1988, her supporting witness admitted he did not attend the ceremony, and the Petitioner could not provide a specific date for the event. Finally, the Objector dismisses the Petitioner's use of burial photographs and a separate

burial program as proof of marriage, highlighting that the Petitioner avoided the family's official burial committee to meet with her own group at a bar. Consequently, the Objector urges the court to dismiss the Petitioner's claim and recognise the deceased as a bachelor.

Petitioner's Submissions

34. The Petitioner's primary argument is that a valid marriage existed through a ten-year cohabitation from 1986 to 1996. That this union was formalised under Kikuyu customary law in September 1987, when the deceased and his family, including the Objector and his uncle, Joseph Njuguna Gichege, visited the Petitioner's parents in Njoro and paid a dowry of Kshs. 15,000/=.
35. The Petitioner contends that her status was publicly and socially recognized by the deceased's family, as evidenced by her inclusion in the *Daily Nation* obituary and the funeral programme. She argues that under Kikuyu custom, a woman and her children would only be permitted to stand beside a coffin for photographs with the express permission of the family. Furthermore, that the Objector herself admitted under oath in an affidavit sworn on 19th January, 2000, that Joyce had cohabited with her son, stating:-

“...That further to the foregoing, although it is true that the petitioner (Joyce Nyambura) co-habited with my son at one time...”

36. To support the legal validity of this marriage, the Petitioner cites ***In Re Estate of Wakaba (2008) 1KLR (G & F) PAGE 328***, where Rawal J (As she then was)held that;-

“Stringent application by courts of the customary law would negate the letter and spirit of section 3 of the Judicature Act (Cap 7). Customary law should be interpreted with flexibility and breadth of views. Even in circumstances where parties fail to fulfil all the ingredients of Kikuyu customary law, as where dowry is paid to a

female relative and the absence from a ceremony of male relatives from either side, a court may nevertheless find that there exists a valid marriage under customary law. There was nothing in Kikuyu customary law opposed to the concept of presumption of marriage. Such a presumption may arise where a man and a woman cohabit for a long period without solemnizing their union by going through a recognized form of marriage”.

37. Reliance was also placed on the case of *In re Estate of Dr. Quintus Ekessa (Deceased) (2025) KEHC 274 (KLR)*, where Musyoka J held that;-

“The courts have observed that customary law is dynamic, elastic and fluid, and not static, and most of the ceremonies referred to in the writings by Cotran, and in the older court decisions, do not necessarily happen in exactly the manner narrated in those materials, with some of the ceremonies and practices even becoming obsolete. They involved a lot of slaughter and offering of animals, but much of them have since been replaced by exchange of money. What is critical is that the essential steps and ceremonies under custom must be observed in some form or other”.

38. Further reliance was placed on the case of *Mary Nyambura Kangara alias Mary Nyambura Paul vs. Paul Ogari Mayaka, Supreme Court Petition No. 9 of 2021*, where it was stated that;-

“...strict parameters within which presumption of marriage can be made, as including the parties having lived together for a long period of time, having the legal right or capacity to marry, having intended to marry, the presence of consent by both parties to marry, they must have held themselves out to the outside world as being a married couple, the onus of proving presumption is on the party

alleging it, the evidence to rebut it must have been strong distinct satisfactory and conclusive, and the standard of proof should be on a balance of probability”.

39. Further still , reliance was placed on *In re Estate of Cosmas Ikunyua M'mbwiria (Deceased) [2024] KEHC 2087 (KLR)*, where the court held that;

“...Customary law is certainly not static. Like all other human inventions, it is dynamic and keeps evolving from generation to generation. Customary ceremonies cannot therefore be expected to be conducted in 2013 in exactly the same way that they were conducted in, say, 1930. To insist on rigid customary ceremonies at all times is the surest way of rendering customary law obsolete... The bottom line appears to be that the essential steps and ceremonies must be performed, irrespective of the form in which they are performed.

40. On whether the alleged children are children of the Deceased, the Petitioner submits that the children were born during the subsistence of the 10-year cohabitation, she submits that the deceased paid their fees, and they were named according to custom. She also highlights that since the Objector declined to undergo a DNA test, the same should be ruled against her.

41. As to whom the properties should be distributed, the Petitioner moves the court to distribute the estate to herself and her children based on Section 66 of the Law of Succession Act that states that:-

“When a deceased has died intestate, the court shall, save as otherwise expressly provided, have a final discretion as to the person or persons to whom a grant of letters of administration shall, in the best interests of all concerned, be made, but shall, without prejudice

to that discretion, accept as a general guide the following order of preference. (a) surviving spouse or spouses, with or without association of other beneficiaries; (b) other beneficiaries entitled on intestacy, with priority according to their respective beneficial interests as provided by Part V; (c) the Public Trustee; and (d) creditors.”

42. Further, that Section 35 (1) of the Law of Succession Act provides that;-

“Subject to the provisions of section 40, where an intestate has left one surviving spouse and a child or children, the surviving spouse shall be entitled to— (a) the personal and household effects of the deceased absolutely; and (b) a life interest in the whole of the residue of the net intestate estate.”

43. On that basis, the Petitioner urges this court to confirm the Grant as per the amended Grant.

Analysis and Determination

44. The duty of a probate court is to identify the estate of a deceased person and the lawful beneficiaries to the estate and then distribute the same to the beneficiaries. Musyoka J. in the case of **Re Estate of Alice Mumbua Mutua (Deceased) [2017] eKLR** elucidated this role as follows:-

“...The Law of Succession Act, and the Rules made thereunder, are designed in such a way that they confer jurisdiction to the probate court with respect to determining the assets of the deceased, the survivors of the deceased and the persons with beneficial interest, and finally distribution of the assets amongst the survivors and the persons beneficially interested. The function of the probate court in the circumstances would be to facilitate collection and preservation

of the estate, identification of survivors and beneficiaries, and distribution of the assets.”

45. Upon considering the Petition, the Protest, the witnesses' statements, the documents filed, together with the testimonies of all the witnesses and the submissions by parties, the issues for determination are ;-

- 1) Whether the Petitioner, Joyce Nyambura Kariuki, was a lawful wife of the deceased under Kikuyu customary law.***
- 2) Whether the persons alleged to be the children of the deceased are his lawful dependants and beneficiaries of the estate.***
- 3) Whether the properties registered in the name of the deceased form part of his free estate or are held in trust for the Objector.***
- 4) Whether the grant of letters of administration should be confirmed and, if so, how the estate ought to be distributed.***

46. On the **first issue**, the Petitioner asserts that she was married to the deceased in 1986 under Kikuyu customary law and that all essential rites were performed, including introduction, negotiations, and payment of dowry in the sum of Kshs 15,000. Her account is partly corroborated by PW2 (Joseph Karanja Gichege), who confirmed the dowry payment and the existence of the marriage, albeit indicating that he was represented during the payment of the said dowry. She also relies on cohabitation between 1986 and 1996 and the existence of children as further evidence of a marital relationship.

47. The Objector, on the other hand, strongly disputes the existence of any such marriage. She maintains that no customary rites were conducted to her knowledge, and that under Kikuyu custom, her involvement or at least awareness would have been expected. She further states that the deceased never introduced the Petitioner as a wife.

48. With the Petitioner in this case having alleged to have been married under Kikuyu customary law, then this court notes that in ***Kimani Gituanja v Jane Njoki Gituanja [1983] KECA 2 (KLR)***, the Court of Appeal held that:

“The existence of a customary marriage is a matter of fact to be proved with evidence.”

49. Further, Kneller JA in the case of ***Mary Njoki v John Kinyanjui Mutheru [1985] KECA 32 (KLR)***, referring to the case of ***Hortensia Wanjiru Yawe v Public Trustee Civil Appeal No 123 of 1976*** and his own decision in ***Anna Munini and Another v Margaret Nzambi [1984] e KLR***, stated:-

“A reading of all the judgments in Yawe’s appeal leads me to believe that it was held that:- (i) The onus of proving customary law marriage is generally on the party who claims it;(ii) The standard of proof is the usual one for a civil action, namely, one the balance of probabilities;(iii) Evidence as to the formalities required for a customary law marriage must be proved to that standard; (of Mwagiru v Mumbi (1967) EA 639, 642 (K);(iv) Long cohabitation as man and wife gives rise to a presumption of marriage in favour of the party asserting it.(v) Only cogent evidence to the contrary can rebut the presumption (Taplin, Watson v Tate, (1937) 3 All ER 105) (Ch Div); (vi) If specific ceremonies and rituals are not fully accomplished this does not invalidate such a marriage (Sastry Velaidar Aronegary v Sembecutty Vaigalie (1880-1) AC 364 (PC); Sheppherd, George v Thyer, (1904) 1 on 456. And see also Re Taylor, (1961) 1 All ER 557 (CA)”

50. The essentials of a Kikuyu customary marriage are described in Eugene Cotran’s ***“Case Book on Kenya Customary Law”*** at page 30 to be:-

“(1) Capacity: The parties must have capacity to marry and also to marry each other.(2) Consent: The parties to the marriage and their respective families must consent.(3) Ngurario: No marriage is valid under Kikuyu customary law unless the Ngurario ram is slaughtered.(4) Ruracio: There can be no valid marriage under Kikuyu customary law unless a part of the ruracio (dowry) has been paid.(5) Commencement of cohabitation. The moment at which man and woman legally became husband and wife is when the man and woman commence cohabitation.”

51. Further, the Court of Appeal in *Eva Naima Kaaka & another v Tabitha Waithera Mararo [2018] KECA 762 (KLR)*, held that;-

“From the above it becomes apparent that, no ram or goat was slaughtered to mark the coming into existence of a marriage. Without the presence of the central feature of the ngurario ceremony, it cannot be said that a valid Kikuyu customary marriage came into existence between Waithera and the deceased.”(Emphasis added)

52. Further, the Court of Appeal in *MNM V DNMK & 13 Others [2017] e KLR* held that:

“To prove a valid Kikuyu customary marriage, E was obliged to adduce evidence showing on a balance of probabilities the essential rites and ceremonies, without which a Kikuyu customary marriage is not valid, were performed. On the essentials of a valid Kikuyu customary marriage, Dr. Eugen Cotran, in his seminal work Restatement of African Law: Kenya Volume1 The Law on Marriage and Divorce (supra) explains that no marriage is valid under Kikuyu law unless the ngurario ram is slaughtered and that

there can be no valid marriage under Kikuyu law unless part of the ruracio has been paid. (See also Zipporah Wairimu v. Paul Muchemi, HCSCNO 1880 of 1970). These are the rites that E readily admitted were not performed on account of her father's Christian background, and yet she was insisting that she was married under Kikuyu customs. Although she later on changed track and insisted that dowry was paid and ngurario performed, there is no credible evidence on record to prove that. It is inconceivable that the ngurario ceremony could be performed by a few people in a hurry, as she testified, on a day when the family was also involved in a funeral, and also in the absence of the deceased, who with E would have been the stars of the ceremony and responsible for cutting the lamb's shoulder. It is also far fetched to claim, as she did, that a different person represented the deceased in such an important ceremony. As this Court observed in Eliud Maina Mwangi v. M Wanjiru Gachangi: Even if we allow room for evolution and development of customary law, it does not appear to us that ngurario under Kikuyu customary law has today transformed into a casual ceremony performed by a delegation of just two people.”

53. In the present case, the Petitioner attempted to establish the validity of her Kikuyu customary marriage and stated that three distinct ceremonies were performed: the formal introduction or notification of her parents regarding the intent to marry, dowry negotiations, and the subsequent payment of Ksh 15,000 as dowry.
54. However, these claims remain largely unverified. There was no independent corroboration of the introduction or the negotiation phases. Notably, her own

witness, Joseph Karanja Gichege, while testifying that dowry was paid, admitted during cross-examination that he did not actually attend the ceremony, as his younger brother purportedly represented him. Furthermore, he was categorical in his testimony that no formal ceremony ever took place.

55. Under Kikuyu customary law, the performance of specific rites and ceremonies, such as “*Ruracio*” and “*Ngurario*”, is essential for a marriage to be recognised as valid. The Petitioner bore the burden of providing the court with substantial evidence to confirm these traditional observances. The mere alleged payment of Kshs. 15,000 does not constitute a marriage as contemplated by law. Consequently, the Petitioner has failed to prove she was customarily married to the deceased.

56. On the **second issue**, whether the persons alleged to be the children of the deceased are his lawful dependants and beneficiaries of the estate, the Petitioner claims that she had three children with the deceased. She was supported by PW2, who confirmed their existence and a relationship to the deceased. The Objector disputes the existence of these children as dependants of the deceased, pointing out that the birth certificates were obtained after the deceased’s death. The Petitioner herself conceded this fact during cross-examination.

57. The meaning of who a dependant is provided for under section 29 of the Law of Succession Act as follows;-

“For the purposes of this Part, “dependant” means—(a)the wife or wives, or former wife or wives, and the children of the deceased whether or not maintained by the deceased immediately prior to his death;(b)such of the deceased's parents, step-parents, grandparents, grandchildren, step-children, children whom the deceased had taken into his family as his own, brothers and sisters, and half-brothers

and half-sisters, as were being maintained by the deceased immediately prior to his death; and(c)where the deceased was a woman, her husband if he was being maintained by her immediately prior to the date of her death.”

58. The Petitioner’s case rests primarily on her own testimony and that of PW2. However, these assertions lack independent corroboration from neutral sources such as school records, medical history, or proof of acknowledgement by the deceased during his lifetime. Conversely, the Objector maintained a consistent denial, asserting she had no knowledge of the children's existence while the deceased was alive.
59. There is also no evidence of the deceased acknowledging the children during his lifetime, nor any documentary proof, such as school records, medical records, or other contemporaneous evidence linking the children to the deceased.
60. Further, although a court-ordered DNA test was never conducted, this court acknowledges that DNA evidence is not the sole method of establishing dependency. A claimant may succeed on a balance of probabilities through consistent oral and documentary evidence.
61. While it is not in dispute that the subject children were born during the deceased’s lifetime, specifically in 1987, 1988, and 1993, the birth certificates produced as proof of parentage were obtained posthumously between February and March 1999. The probative value of such documents is significantly diminished when they are issued after a party’s demise without support from contemporaneous records or corroborative evidence, particularly where paternity is contested by the deceased’s own mother.

62. In this instance, the Petitioner failed to provide the cogent and independent material necessary to bridge the evidentiary gap created by the posthumous birth certificates.
63. Consequently, in the absence of credible corroboration beyond the assertions of the Petitioner and PW2, this Court finds that the Petitioner has failed to discharge the evidentiary burden required to prove that the said children were dependents of the deceased.
64. On the **third issue**, that is, whether the properties registered in the name of the deceased form part of his free estate or are held in trust for the Objector, the Objector's case is that although the properties are registered in the name of the deceased, they were in fact acquired by her and registered in his name while he was still young, thereby creating a trust in her favour. She testified that she was engaged in business, generated income, and facilitated the acquisition of the properties and vehicles attributed to the deceased.
65. The Petitioner, on the other hand, maintains that the properties belong to the deceased and constitute his estate. She identified specific properties, including LR No. 12250/216 and Dundori/Lanet Block 2/109, as matrimonial property acquired during the subsistence of her marriage to the deceased. However, she admitted that she did not contribute financially to their acquisition and that none of the properties was registered in her name.
66. Under Section 3 of the Law of Succession Act, an "**estate**" means the free property of a deceased person, while "**free property**" in relation to a deceased person is defined to mean the property of which that person was legally competent to freely dispose of during his lifetime and in respect of which his interest has not been terminated by his death.
67. Regarding ownership of land, Section 24 (a) of the Land Registration Act provides that the registration of a person as the proprietor of land shall vest

in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto.

68. Further, Section 26 (1) on the other hand provides that the certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge save for the exceptions provided thereunder.
69. It is therefore upon the person who wishes the court to find otherwise to satisfactorily present evidence to the contrary.
70. In the petition dated 6th April 1999, the Petitioner identified several assets as forming the estate of the deceased, and these included Plot No. 216 Lanet Hill, a farm at Ndege Farm, and Plot No. 797 at Nakuru Municipality Sacco. Additionally, the Petitioner listed vehicles with registration numbers KAJ 317U, KXJ 342, KAD 185D, and KQG 554, a sum of Ksh 320,000 from the sale of vehicle KAH 598A to a Mr. Maigua, and an undisclosed amount held at Barclays Bank.
71. The Objector contested the inclusion of LR No. 12250/216 (I.R. 31718), arguing that she purchased the property on 1st September 1977 and registered it in her son's (the deceased's) name to secure his interests should she predecease him. While the lease for the said parcel was effective from 1st September 1977, it was formally registered in the deceased's name in 1991. Furthermore, the Objector argued that none of the listed vehicles was registered in the deceased's name and, therefore, do not form part of the estate.

72. A perusal of the record reveals that none of the motor vehicles was registered in the name of the deceased; consequently, they cannot form part of the estate. Similarly, no evidence was tendered to support the allegation of monies owed to the deceased by Mr. Maigua. Furthermore, the parties failed to provide any evidence regarding the existence of funds allegedly held at Barclays Bank.
73. Both Petitioner and the Objector have only furnished the Court with evidence regarding three properties, which have all been registered in the name of the deceased. They are:-
- 1) LR No. 12250/216 (I.R. 31718), registered on 20th June 1991;**
 - 2) Ndundori/Lanet BLK 2/109 (Ndege), registered on 24th August 1989; and**
 - 3) Kiambogo/Miororeni BLK 1/797, registered on 9th August 1995.**
74. Although the Objector alleged that *LR 12250/216* was her own property held in trust by her son, no evidence was tendered to support the existence of such a trust. Regarding the Objector's claim that the deceased was only 14 years old at the time of the initial purchase and thus lacked the capacity to acquire land: while this may be factually correct, the court notes that the property was formally registered to the deceased on 20th June 1991, by which time he had attained the age of majority.
75. Consequently, the Objector was required to provide further evidence to substantiate her claim of a resulting or constructive trust, which she failed to do. The Objector's claim is, therefore, unsubstantiated. On that basis, this Court hereby declares the three properties to be free of encumbrance and forming part of the estate of the deceased.
76. On the final issue of whether the Grant of Letters of Administration should be confirmed and how the estate ought to be distributed, this Court has

already determined that the Petitioner and her children do not qualify as dependants within the meaning of the Law of Succession Act. Consequently, the Objector remains the sole surviving dependant and heir to the estate. It follows, therefore, that the identified properties of the deceased shall devolve entirely to the Objector.

77. In view of the foregoing finding, this court makes the following Orders;-

- 1. The Grant of Letters of Administration Intestate is hereby confirmed, with the Objector being declared the sole beneficiary of the estate.**
- 2. The following real properties shall hereby devolve to the Objector absolutely:**
 - a) LR No. 12250/216 (I.R. 31718);**
 - b) Ndundori/Lanet BLK 2/109 (Ndege); and**
 - c) Kiambogo/Miororeni BLK 1/797.**
- 3. Each party shall bear their own costs of this petition.**

Dated, signed and delivered at Nakuru this 13th day of May 2026

PATRICIA GICHOHI

JUDGE

In the presence of

Mr.Ndung'u for Petitioner

Mr.Wachira h/b for Mr. Ikua for Objector