



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Change Njuki (Deceased) (Succession Cause
207 of 2015) [2025] KEHC 3939 (KLR) (27 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 3939 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
SUCCESSION CAUSE 207 OF 2015
EM MURIITHI, J
MARCH 27, 2025**

BETWEEN

BEATRICE FAITH MUTHONI CHANGE APPLICANT

AND

JANE WAMAITHA MITHAMO 1ST RESPONDENT

ALFRED NJUKI CHANGE 2ND RESPONDENT

AND

JOHN MACHARIA KAMAU INTERESTED PARTY

JUDITH WANENE KAMAU INTERESTED PARTY

RULING

1. The applicant filed Summons for Revocation of Grant dated 29th March, 2017 on the following grounds:
 1. That the proceedings to obtain the Grant in the Names of Jane Wamaitha Mithamo and Alfred Njuki Change the respondents herein and, the subsequent Confirmation of Grant and distribution of the estate of Deceased were fraudulent and false.
 2. That the respondents did not disclose to the Honourable Court the fact that Beatrice Faith Muthoni Change the Applicant herein is a wife of the Deceased.
 3. That the Respondents failed to involve and/or inform the Applicant being a wife of the deceased when they filed Succession Cause and they did not Seek her written Consent as required by the Law.



4. That the respondents have distributed the estate of the Deceased Change Njuki who died domiciled in Kenya on the 11th December, 2011 between themselves thus disinheriting the Applicant.
2. The application is based on the supporting affidavit of applicant setting out the facts relied on. The applicant avers that she is the wife of the late Change Njuki and that the 1st Respondent and the 2nd Respondent are her step daughter and her step son respectively. That prior to his death, the deceased Change Njuki was the Registered owner of Land Parcel No. Mwea Tebere/B/1651 measuring approximately 1.84 HA. That on or thereabout 18th February, 2015 the respondents obtained a chief's letter in order to pursue Succession causes vide Land Parcel No. Mwea Tebere/B/1651 but omitted her name as a beneficiary of her husband's estate and her children. That the Respondents secretly filed a succession cause vide Succession cause no 207 of 2015 without her knowledge and participation. That the 2nd Respondent swore a false affidavit to enable them file the succession cause without the relevant documents. That on or there about 16th September, 2015 Letters of Administration intestate of the Estate of the Deceased who died domiciled in Kenya on the 11th December, 2011 were granted to the Respondents. That the grant of letters of Administration were confirmed on the 13th July, 2016 and issued on the on the 19th July, 2016. She, therefore, prayed that the grant to be annulled/ revoked.
3. The respondent opposed the application on 15th October, 2020 on the following grounds of opposition that the proceedings to obtain the grant herein and eventual distribution of the estate of the deceased comprised on L.R Mwea/Tebere/B/165 were done openly, procedurally and without any fraud or concealment as alleged by the Applicant herein. That the Applicant by virtue of being a stranger to the estate of the deceased was not entitled to be involved or even to inherit a share of the estate. The respondents aver that they are aware that sometimes in year 2010, their late father had his Identity Card No. 2900963 and Title deed for L.R Mwea Tebere/B/1651 lost within Wang'uru Township and such loss was duly reported to the relevant Government agencies including the office of the Chief and Kerugoya Police Station. That the deceased swore an affidavit dated 28th December, 2010 to enable him acquire a new title deed. That the applicant is their in-law and had leased a portion of their father's land. Finally, the respondents averred that they have proceeded to sell the land to third parties and that L.R Mwea Tebere/B/1651 is registered in the names of third parties.
4. The applicant further affidavit that she was the third wife of Change Njuki who was registered as the proprietor of L.R Mwea/Tebere/1651 on 16th July, 1999. That she got married to Change Njuki in 1999. She was living with her husband on the suit land before his demise. That she still lives and depend on the land and she has exclusive possession and control of the land as is evident from the Photographs annexed. That her husband's other family have always been harassing her. That she came to realize that a Succession Cause herein in respect of the estate of her late husband was fraudulently filed by the Respondents herein after being issued with an Eviction Notice dated 9th January, 2017.

Evidence

5. Beatrice Faith Muthoni- Applicant testified on 21st September, 202 adopting her Supporting Affidavit sworn on 29th March, 2017 and a Further Affidavit sworn on 7th November, 2017 as her evidence —in-chief, and she also produced annexures “BFMC 1-8” in her Supporting Affidavit and annexures “BFMC 1-106” in the Further Affidavit as exhibits. She testified that she was married by the deceased while having 4 children and that the deceased had not sired any child with her.
6. Alfred Njuki – 2nd Respondent testified on 21st September, 2023 and relied on his statement dated 13th June, 2017 and filed in court on 14th June, 2017. He claimed that the Applicant was never a wife of the deceased and that the proceedings to obtain grant were procedurally done. After the Respondents



concluded succession, Land Parcel Mwea Tebere/B/1651 was transferred to them and they transferred the same to the Interested Parties. Under Paragraph 13 of his statement, the 2nd Respondent maintained that the Applicant had only leased the parcel of land from the deceased to plant rice.

7. John Macharia Kamau - 1st Interested party, testified on 18th December, 2023 and relied on the Replying Affidavit sworn on 11th April, 2019 together with annexures setting out his claim that him and the 2nd Interested Party are the registered proprietors of Land Parcel Mwea Tebere/B/1651 having entered into a Sale Agreement with the Respondents herein for purchase of the whole parcel of land at Kshs.4,322,500/=.

Applicant Submissions

Whether the Applicant was a wife to the deceased

8. It was the Applicant evidence in court that she is the 3rd wife of the deceased having being married in the year 1999 married under Kikuyu Customary Law and there was a ruracio. They did not have any children together but they agreed to raise their different children together. The deceased died in 2011 and during his burial ceremony there was no written burial programme.
9. It was also her evidence that after she got married to the deceased she was taken to Land Parcel Mwea Tebere/B/1651 to live there. She produced several Photographs as Exhibits to confirm this. These photographs were never disputed the other parties.
10. It was submitted that the 2nd Respondent herein Alfred Njuki Change during cross examination by the Applicant's counsel confirmed that the Applicant stayed with the deceased save that she was staying in separate room. It was also his evidence during cross-examination that the Applicant herein lived on the parcel of land before this Succession was commenced and was also on the land when the land was sold to the Interested Parties. Further, his allegation that the Applicant had only leased the house from the deceased is not only untrue but also unsubstantiated. No lease agreement or prove of payment of rent was ever adduced to confirm that the Applicant was just a tenant. The applicant submits that she was a wife of the deceased and for that reason urge this court to invoke Section 76 of the [Law of Succession Act](#) and annul/ revoke the grant of representation as it was obtained fraudulently and by making a false representation.

Sale of Land Parcel Mwea Tebere/B/1651 to the interested parties

11. It was submitted that the Respondents and the Interested Parties applied for Land Control Board on 6th December, 2016 prior to entering into a sale agreement. The Respondents herein and the Interested Parties entered into a sale agreement for sale of Land Parcel Mwea Tebere/B/1651 on 20th December, 2016 two weeks after applying for Land Control Board. Consent to transfer the parcel of land was given on 8th December, 2016. It is unclear on what basis that the Respondents herein and the Interested Parties were relying on given that at the time of applying for consent there was no intention to sell the parcel of land.
12. The Green Card for Land Parcel Mwea Tebere/B/1651 which was produced as Interested Parties Exhibit JMK3C note that the purchase price was Kshs.500,000/= while the sale agreement dated 20th December, 2016 notes that the purchase price was Kshs.4,322,500/=. Further, they submit that at the time of the execution of the sale agreement dated 20th December, 2016 the Applicant was living on the parcel of land and for that reason the Interested Parties cannot claim to be bona fide purchasers for value because they did not do due diligence before acquiring the parcel of land.



13. The applicants cited *Kihara v Gichuhi & 2 others* (Environment and Land Case Civil Suit 753 of 2012) [2023] KEELC 19807 (KLR) it was held that a party who fails to carry out proper due diligence or who is negligent in doing so while purchasing a property has only himself to blame when it turns out that the person who sold the property to him had not disclosed all material facts and he cannot be heard to claim that he purchased the property innocently and in good faith.

Respondent submissions

Whether the Applicant was a wife to the deceased

14. The Applicant testified that the deceased married her in the year 1999 and he paid her ruracio. However, she failed to call any witness to support her claim that her Ruracio was paid. It was urged further that during cross-examination, the applicant did not provide any photograph to prove the said event took place.
15. The Respondents submit that the Applicant was not a wife for the purpose of Succession and it follows that she has no locus to file the Summons for revocation and the same are a nullity.

Submissions of the Interested party

16. The Interested Party did file Submissions dated 7/2/2025 opposing the application for revocation of Grant. It was urged, principally that the applicant had not proved her marriage as would entitle her to the relief sought and, in any event, the revocation of the Grant would not affect valid transfer in terms of section 93 of the [Law of Succession Act](#), as follows:

“ 1. Whether the applicant was a wife of the deceased

Your Lordship, it is trite law that he who alleges must prove. This is well expounded in Section 107, 108, 109, 110 and 112 of the [Evidence Act](#). The applicant has not in any way in her supporting affidavit demonstrated how she contracted a marriage with the deceased. She did not depone in her affidavit whether the purported marriage was customary, Christian marriage, civil marriage or presumptive marriage over a long cohabitation. In addition to the foregoing, the applicant did not call any witness to corroborate her evidence and produce any exhibit may it be photographs or a marriage certificate to prove her marriage with the deceased. Therefore her assertions and allegations are empty words with no substance. In this regard therefore we refer to the case of *Josephat Kibanya Ngobia & 3 Others v Alice Kaguyu Gakuu & 3 Others* [2014] eKLR where the High Court sitting at Kerugoya at paragraph 22 thereof cited with approval the case of *Re The Estate Of Nebard M. Birichi Kirombi DCD – Meru HCC NO. 148/95* and reached at the following conclusion:- 22 This Court also finds that the Applicants have to demonstrate that they were dependants to the deceased to warrant them being involved in the administration of the estate. They have failed to establish any of the grounds cited under Section 76 of the [Law of Succession Act](#) to warrant revocation of grant. In the case of *Re The Estate Of Nebard M. Birichi Kirombi DCD – Meru HCC No. 148/95* the Court held inter alia as follows: “I agree with the counsel for the petitioner that the applicants allegations are mere empty words without substance. I also concur with counsel for petitioner that the applicant’s application is an after thought. Why did he wait for nearly



10 years to come to court for what he believes rightly belonged to him? The point I am making is that the applicant's application has no merit and no substance. The applicant is a mere busy body whose interest in the estate is farfetched. In my opinion therefore, it is not expedient to make a provision for the applicant who has failed to prove that he is a dependant of the deceased." The applicant did not also adduce evidence as to whether there was payment of dowry or commencement of any customary rights to celebrate her marriage. As indicated earlier the onus of proving a marriage lies on the person claiming the existence of such marriage and in this case the applicant herein. This was the holding in the case of Njoki Vs Mathara And Others Civil Appeal No. 71 OF 1989 which was cited with approval in the case of In Re Estate Of John Kiruki Wanuthu (Deceased) [2022] eKLR at paragraph 52 thereof where the court held as follows:- "a) The onus of proving a customary marriage is on the party who claims it. b) The standard of proof is the usual one for civil action, balance of probabilities. c) Evidence as to the formalities required for a customary law marriage must be proved to the above standard." To buttress the above holding the Court in the said case of In Re Estate Of John Kiruki (Supra) cited with approval the at paragraph 54 the Court of Appeal case of Mary Wanjiru Githatu v Esther Wanjiru Kiarie (Court of Appeal at Eldoret in Civil Appeal No. 20 of 2009) where the court stated as follows: "It is important to observe that customary law marriages have some important ingredients without which they cannot possibly qualify as such. The ingredients are essentials in the making of a customary law marriage. A customary law marriage is a covenant of marriage sealed by the necessary customary ingredients and for the Kikuyu these ingredients are well known and documented. If the courts were to fail to take this into account, they would be giving recognition to the 'come we stay' marriages which are neither customary nor statutory" From the foregoing, the applicant has failed to establish that she was a wife of the deceased and as thus her application for revocation of grant must fail.

2. Whether the interested parties obtained a good title deed from the respondents

Your Lordship, the interested parties are purchasers for value and in good faith of the suit land herein. To prove this, the interested parties produced the following documents which are annexed in their replying affidavit a) Title deed b) a sale agreement, c) a bank deposit slip as proof of payment of the purchase price d) application for consent of Land Control Board e) Letter of Consent f) Green Card for the suit land. In regard to the foregoing, the title deed issued to the interested parties is protected under Section 93 of the [Law of succession Act](#) which provides as follows:-

93. Validity of transfer not affected by revocation of representation

- (1) All transfers of any interest in immovable or movable property made to a purchaser either before or after the commencement of this Act by a person to whom representation has been granted shall be valid, notwithstanding any subsequent revocation or variation of the grant either before or after the commencement of this Act.



- (2) A transfer of immovable property by a personal representative to a purchaser shall not be invalidated by reason only that the purchaser may have notice that all the debts, liabilities, funeral and testamentary or administration expenses, duties, and legacies of the deceased have not been discharged nor provided for.

17. Judgment was reserved.

Issues

18. Whether the Applicant was a wife to the deceased and whether the sale of the suit property to the Interested Parties was valid.

Analysis

19. By the Summons for Revocation of Grant dated 29th March, 2017 and filed in court on 30th March, 2017, the Applicant herein seeks to revoke the Grant of Letters of Administration Intestate made to the Respondents herein on 16th September, 2015 and confirmed on 13th July, 2016.

20. Under section 66 of the *Law of Succession Act*, the persons entitled to petition for a Grant are set out as follows:

“66. Preference to be given to certain persons to administer where deceased died intestate

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: Provided that, where there is partial intestacy, letters of administration in respect of the intestate estate shall be granted to any executor or executors who prove the will. [*Act No. 8 of 1976*, s. 14.]”

21. Section 3 (5) of the *Law of Succession Act* provides for the inheritance of a widow under customary polygamous marriage in the relevant parts as follows:

“(5) Notwithstanding the provisions of any other written law, a woman married under a system of law which permits polygamy is, where her husband has contracted a previous or subsequent monogamous marriage to another woman, nevertheless a wife for the purposes of this Act, and in particular sections 29 and 40 thereof, and her children are accordingly children within the meaning of this Act.”

22. The spouse has the first degree of consanguinity to petition for Grant, and if wrongly left out, a spouse must be entitled to seek the revocation of that Grant by persons in or equal or lesser degrees of priority.



23. An applicant who seeks to inherit a deceased person on the basis of being a wife under customary law must, therefore, demonstrate a valid marriage with the deceased in terms of section 3(5) of the [law of Succession Act](#), or, as held in *Hortensia Wanjiku Yawe v The Public Trustee*, supra, establish facts from which a marriage may be presumed.

Whether the Applicant was a wife to the deceased

24. The applicant avers that she is the wife of the late Change Njuki and that the 1st Respondent and the 1st and 2nd Respondent are her step daughter and her step son, respectively. She testified that she married Change Njuki in 1999. She was living with her husband on the suit land before his demise and that she still lives and depend on the land, of which she has exclusive possession and control of the land as is evident from the Photographs produced. They did not have any children together but they agreed to raise their different children together. The deceased died in 2011 and during his burial ceremony there was no written burial programme.
25. The Applicant testified that the deceased married her in the year 1999 and he paid her Ruracio. However, she did not call any witness to support her claim that her Ruracio was paid. During cross-examination, she failed to provide any photograph to prove the said event took place.
26. The 1st respondent's statement indicated that the applicant had started as a tenant on her father's rice paddy and thereafter requesting for a room to store the harvest and thereafter "the applicant herein became close to our late father and even started living with him sometime in the year 2008." According to the 1st Respondent their father was then taken ill and hospitalized on 25/10/2010 and upon discharge he did not go back to his home at Nderwa village but started living with his children at Kiriko village until his death in 2011. During his stay with his children, the deceased had sent the area headman to go to his house and "collect his title deed, national identity card and his driving licence and all other necessary documents and the Headman had gone and had not found the documents and "as a result raised suspicion since the only person my father stayed with in his house was the Applicant herein"
27. It is clearly conceded by the Respondents that the Applicant had lived with the deceased from sometime in 2008 to October 2010 when he was hospitalized. Did this cohabitation of two years lead to a presumption of marriage?
28. Madan JA in the lead Judgment in *Mary Njoki v John Kinyanjui Muthuru* [1985] KECA 32 (KLR) said of presumption of marriage as follows:

"The concept of presumption of marriage is not new in Kenya. It was recognized and accepted by the former Court of Appeal in [Hortensia Wanjiku Yawe v Public Trustee in Civil Appeal No 13 of 1976](#), and by this court in *Mbithi Mulu and Another v Mitwa Mutunga* in Civil Application No NAI 17 of 1983.

In *Yawe Mustafa* JA delivering the leading judgment of the court said that there is nothing in Kikuyu customary law opposed to the concept of presumption of marriage. Wambuzi P said (ibid) the presumption is nothing more than an assumption that the parties must be married irrespective of the nature of the marriage actually contracted. I would add also irrespective of marriage if one is not actually contracted.

It is a concept born from an appreciation of the needs of the realities of life when a man and woman cohabit for a long period without solemnizing their union by going through a recognized form of marriage, then a presumption of marriage arises. If the woman is left stranded either by being cast away by the "husband", or because he dies, occurrences which do happen, the law, subject to the requisite proof, bestows the status of "wife" upon the



woman to enable her to qualify for maintenance or a share in the estate of her deceased “husband”.

It is a concept which is beneficial to the union of marriage, to the status of the parties and to the issue of their union. Yawe (supra).”

29. Kneller JA in *Mary Njoki v John Kinyanjui Muthuru*, supra, held as follows:

“ 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); *Sheppard, George v Thyer*, [1904] 1 on 456. And see also *Re Taylor*, (1961) 1 All ER 557 (CA)

Whether or not the presumption arose and became more than that or whether it was rebutted was a question of fact [for the Court].”

30. On cross-examination, the applicant admitted that the chief’s letter did not include her as a beneficiary of the deceased’s estate, Land Parcel No. Mwea Tebere/B/1651. The applicant submitted that the 2nd Respondent herein Alfred Njuki Change during cross examination by the Applicant’s counsel confirmed that the Applicant stayed with the deceased save that she was staying in separate room. Further, she testified that she had original title deed for the suit and the deceased’s identity card as they lived together.

31. However, the 2nd Respondent testified that the applicant had been given a separate room to live in. The compound had 2 houses, one had 3 rooms and the other had 2 rooms. The respondents aver that sometimes in year 2010, their late father had his Identity Card No. 2900963 and Title deed for L.R Mwea Tebere/B/1651 lost within Wang’uru Township and such loss was duly reported to the relevant Government agencies including the office of the Chief and Kerugoya Police Station. That the deceased swore an affidavit dated 28th December, 2010 to enable him acquire a new title deed. They said that the applicant had leased the shamba from the deceased. The Respondents had told her to leave the shamba but she refused. She was given a notice to leave the land but she continued to stay there for about one year.

32. In terms of section 107, 108 and 109 of the *Evidence Act*, it is for the applicant in accordance with the plaintiff’s duty of proof of circumstances as would entitle her to the relief sought. In this case, the burden did not shift to the respondent as suggest by the applicant’s submissions to prove that she was a tenant on the land and therefore was not married to their father. It was for the applicant to prove that



she was validly married to the deceased. The mere possession of Deceased's Identity Card when it has not been denied that she lived, as tenant, on one of the houses the deceased's land is not sufficient. The applicant did not call evidence to prove the important allegation that the deceased had paid Ruracio. No evidence as to the conduct of the Ruracio paying ceremony from any persons involved.

33. Section 43 of the [Marriage Act](#) 2014 recognizes part payment of dowry, or Ruracio in this case, as follows:

“43. Governing law for Customary marriage

- (1) A marriage under this Part shall be celebrated in accordance with the customs of the communities of one or both of the parties to the intended marriage.
- (2) Where the payment of dowry is required to prove a marriage under customary law, the payment of a token amount of dowry shall be sufficient to prove a customary marriage.”

34. There was simply no attempt to prove any payment of Ruracio in this case. On a balance of probabilities, it has not established as more probable than not that the deceased was married to the Deceased. On cross-examination by Counsel for the Respondent, the applicant merely alleged existence of, but did not seek to produce, witnesses to the marriage ceremony, saying:

“When I got married, I was taken to Nderwa ie. Mwea/Tebere/1651. I have never leased a shamba. I have no witnesses to say I was married by deceased, but I can bring a witness. Deceased when he married me, he told me he had 2 other wives: Josphine Wanja (1st wife) and Muthoni Juliana (2nd wife). I was married by Kikuyu traditional way. Soda, mandizi. There are witnesses who can testify to my marriage to the deceased. I did not know they will be required. None has written a statement. I can bring them. Deceased was buried- I know where it is. There was a funeral programme. There was no funeral programme. I refused it. A programme was not written because Njuki was bringing problems. Njuki is the deceased's son.”

35. On cross-examination by the Counsel for the Interested Party, the Applicant said of her marriage to the deceased:

“I was married under customary law. I have evidence. I can avail such evidence of Ruracio.”

36. The Counsel for the Applicant promptly closed the Applicant case after her testimony without seeking to bring the alleged witnesses to the marriage.

37. Moreover, apart from the allegation of having lived on the land for long, which is explained by the respondents in their evidence, the applicant did not show relationship with the deceased s would indicate that the two considered each married to the other and that their relatives and community members regarded them as such husband and wife. In the circumstances of this case, and given the genesis of the relationship as a tenancy over rice paddy portion of land the Court does not find the cohabitation of 2 years as long cohabitation as would lead to a presumption of marriage.



Whether the sale and transfer to the Interested party is valid.

38. Section 93 of the *Law of Succession Act* affords protection for all transfers carried out by an administrator under a Confirmed Grant in good faith for value without notice of any defect in title as subsequently affected by a revocation of the Confirmed Grant.
39. In *Musa Nyaribari Gekone & 2 others v Peter Miyienda & another* [2015] KECA 573 (KLR) , an appeal from a decision of this Court, the Court of Appeal (Maraga JA (as he then was), Musinga & G. Kairu, JJA.) laid down the position as follows:

“39. Section 93 of the *Law of Succession Act* has been the subject of judicial interpretation in a number of cases. In a recent persuasive decision of *Adrian Nyamu Kiugu v Elizabeth Karimi Kiugu and Anor* [2014] eKLR the High Court at Meru stated:

“Whereas the above section states that a transfer by person to whom representation has been granted shall be valid notwithstanding any subsequent revocation or variation of the grant either before or after the commencement of this Act, I am of the considered view that such transaction can only be relied upon where the legal representative is entitled to grant of representation but not where one is not and where one has obtained the grant fraudulently. The purchaser in this cause came from the neighborhood of the objector and it is not possible that he did not know of the objector herein. I therefore find and hold the sale to be invalid. “

40. In *Jecinta Wanja Kamau v Rosemary Wanjiru Wanyoike and Another* [2013] eKLR where the appellant therein unsuccessfully sought protection under section 93, this Court sitting in Nyeri stated:

“Before the appellant could seek protection as a purchaser under Section 93 of the Act she had first to prove that she is a purchaser. In this case, there was no prima facie evidence that she was a purchaser. In any case, and as provided by Section 82 (b) (II) of the Act, it would have been illegal for Beatrice Njeri Magondu to sell the land before the confirmation of the grant.”

41. In *Jane Gachoki Gathecha v Priscilla Nyawira Gitungu and another* [2008] eKLR where a purchaser claimed that he was not aware of, and was not a party to, the fraudulent dealings with the title in issue and was therefore not only protected under S.93 (1) of the *Law of Succession Act* (Cap 60) but also section 143 of the Registered *Land Act*, this Court sitting in Nyeri stated this:

”We think, with respect, that there is a fallacy in invoking and applying the provisions of section 93(1) of the *Law of Succession Act* and the superior court fell into error in reliance of it. The section would only be applicable where, firstly, there is a “transfer of any interest in immovable or moveable property”. Kabitau had no interest in plot 321 or any part thereof and therefore he could not transfer any. A thief acquires no right or interest which is transferable in stolen property. The transaction would be void ab initio and the property is traceable.”



42. In Re Estate of Christopher Jude Adela (Deceased) [2009] eKLR, K.H. Rawal, J (as she then was) had this to say in reference to Section 93 of the [Law of Succession Act](#);

“The correct reading of the said provisions will indicate that the transfer to a purchaser, if shown to be either fraudulent and/or upon other serious defects and/or irregularities can be invalidated. Reading these provisions in the manner will be commensurate with provisions of section 23 of the RTA (Cap 281) or any other provisions of law regarding proprietorship of an immovable property. It shall be a very weak or unfair system of law if it gives a Carte blanche of absolute immunity against challenges to transfer of immovable properties of estate by a personal representative, it shall be simply against all notions of fairness and justice. No court can encourage such interpretation while a personal representative will be protected even while undertaking unethical or illegal action prejudicing the interests and rights or right beneficiaries of the estate.

In short, I do not agree that section 93 of the Act prohibits the discretion of the court to invalidate a fraudulent action by a personal representative.”

43. Those decisions support the position taken by the learned judge of the High Court in this matter when he stated that while under Section 93 of the [Law of Succession Act](#) a revocation or variation of the grant does not invalidate a transfer by the personal representative, other considerations, such as the disposal of the property in contravention of the confirmed grant may invalidate the transfer.”

40. The transfer of the suit property was made in accordance with a valid confirmed Grant of Letters of Administration. The mere occupation of the land by the applicant who the Respondent said was under a tenancy would not raise a concern as would put a potential purchaser on notice as to any conflicting interests which would affect the sale and there is, consequently, no circumstances to vitiate the transfer of the suit property to the Interested Party.

Verdict

41. There was no evidence of Ruracio, or any part or token thereof as permitted by section of the Mariage Act, 2014, having been paid as alleged by the applicant. No valid Kikuyu marriage was ever concluded. Consequently, the applicant has not proved that she was a wife of the deceased for purposes of Succession in terms of section 3(5) of the [Law of Succession Act](#).
42. Were there circumstances in which a presumption of marriage could be inferred? The applicant did not present evidence of facts such as would support a presumption of marriage and call on the respondents to rebut the same. Cohabitation was denied by the Respondents and occupation of the deceased’s house as tenant as conceded by the Respondent does not create necessary cohabitation whose length may in accordance with the authorities support a presumption of marriage.
43. In accordance to section 66 of the [Law of Succession Act](#), a wife is entitled to petition for Letters of Administration and, a customary law wife is entitled to claim inheritance as a dependant under section 29 of the [Law of Succession Act](#) as prescribed in section 3 (5) of the Act. In this case, the applicant has not proved that she was married under customary law as alleged and she is, therefore, not a wife for



purposes of the Act and it follows that she has no locus to file the Summons for revocation and the same will be dismissed for want of merit.

Orders

44. Accordingly, for the reasons set out above, the Court finds that the application for revocation of Confirmed Grant is without merit and it is declined.

45. Each party shall bear their own costs.

Orders accordingly.

DATED AND DELIVERED THIS 27TH DAY OF MARCH 2025.

EDWARD M. MURIITHI

JUDGE

Appearances:

M/S Magee Law LLP for the Applicants.

Mr. Kiguru Kahiga for the Respondents.

Mr. Ngigi Gichoya for the Interested Party.

