



REPUBLIC OF KENYA



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**In re Estate of Stephen Taraiya Kapande (Deceased) (Succession Cause 35 of 2019) [2025] KEHC 12374 (KLR) (2 September 2025) (Judgment)**

Neutral citation: [2025] KEHC 12374 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAJIADO  
SUCCESSION CAUSE 35 OF 2019  
SN MUTUKU, J  
SEPTEMBER 2, 2025  
IN THE MATTER OF THE ESTATE OF STEPHEN TARAIYA KAPANDE  
(DECEASED)**

**JUDGMENT**

**Background**

1. STK, the deceased, died intestate on 4<sup>th</sup> January 2018. On 27<sup>th</sup> June 2019, a Petition for Letters of Administration Intestate was filed by JNM, widow, LNT, widow and CMT, daughter. The three were issued with a Grant of Letters of Administration Intestate on 28<sup>th</sup> October 2019.
2. HNK, claiming interest in the estate of the deceased in her capacity as widow of the deceased, filed Summons for Revocation of the Grant dated 21<sup>st</sup> November 2019 seeking to have the Grant issued on 28<sup>th</sup> October 2019 revoked on allegations that the said Grant was obtained fraudulently by making false statement and by concealment from the court that the Applicant was a wife to the deceased and a beneficiary to his estate.
3. The record of the court shows that there were other applications filed in respect of this estate. This court (Mwita, J) recorded a consent of the parties to the effect, inter alia, that Summons for Confirmation of the Grant be filed within 21 days from 10<sup>th</sup> March 2020 and that any party dissatisfied with the mode of distribution of the estate to file protest within 14 days. The administratrices were also directed to open an account in their joint names where monies collected on behalf of the estate should be deposited, which monies were not to be withdrawn without leave of the court. Further, the administratrices were directed to file an account on how the money collected from the estate has been expended.
4. On 26<sup>th</sup> October 2020, the court (Mwita, J) directed that a Protest be filed within 14 days from that date and fixed the hearing for the Summons for Confirmation of the Grant and the Protest on 1<sup>st</sup> February 2021. However, the hearing did not proceed as scheduled. It was pushed to 29<sup>th</sup> June 2021 to allow the Administratrices time to file response to the Protest. Again, hearing of this matter did not take place as scheduled. It was postponed to 6<sup>th</sup> October 2021.



5. On that date, the matter was placed before me after my transfer to Kajiado High Court. I was not able to proceed with the hearing as scheduled for reasons that at that time, there was on record Summons dated 25<sup>th</sup> January 2021 and Objection to making the Grant as well as a Preliminary Objection dated 24<sup>th</sup> June 2021. I directed that the Summons dated 25<sup>th</sup> January 2021, and the Preliminary Objection be heard first before hearing the Summons for Confirmation. A ruling to that effect was delivered on 2<sup>nd</sup> November 2021 in which the PO was allowed and the Objection and Summons dated 25<sup>th</sup> January 2021 dismissed. This paved the way for the hearing of the Summons for Confirmation of the Grant and the Protest.

### **Summons for Confirmation**

6. The Summons for Confirmation of the Grant is dated 29<sup>th</sup> June 2020. It is supported by an Affidavit sworn by the three administratrices on 29<sup>th</sup> June 2020. In that Supporting Affidavit, seven (7) beneficiaries are listed as follows:
  - i. LNT - widow
  - ii. JNM - widow
  - iii. KKT – son
  - iv. GKT – son
  - v. CMT – daughter
  - vi. TMT – daughter
  - vii. MMT - son
7. The following properties are listed as forming the estate of the deceased and the mode of distribution has been identified as shown:



<b>No.</b>	<b>Asset</b>	<b>Beneficiary</b>	<b>Share</b>
1.	Nairobi/Block 62/XXX	LNT (in trust for CMT)	Absolutely
2.	Kajiado/Olchoro-Onyore/XXX	To be divided between LNT (in trust for GKT, LNT, CMT and KKT) and JNM (in trust for TMT and MMT).	Equally
3.	Ngong/Ngong/XXX	JNM (in trust for MMT)	Absolutely
4.	Kajiado/Kaputiei-North/XXX	LNT (in trust for KKT)	Absolutely
5.	Kajiado/Kaputiei-North/XXX	LNT (in trust for KKT)	Absolutely
6.	Kajiado/Kaputiei-North/XXX	LNT (in trust for KKT)	Absolutely
7.	Kajiado/Kaputiei-North/XXX	JNM (in trust for TMT and MM)	Equally
8.	Kajiado/Kisaju/XXX	To be divided among LNT (in trust for GKT, CMT, KKT) and JNM in trust for TMT and MMT)	Equally
9.	Plot No. XXX Isinya (Savanna)	LN (in trust for GKT)	Absolutely
10.	Kajiado/Kaputiei-North/XXX	JN (in trust for TMT)	Absolutely
11.	Remainder of Cash in Co-operative Bank of Kenya Ltd Current A/c in the name of STK after payment of debts	LNT JNM	Equally
12.	Remainder of Cash in I & M Bank in	LNT JNM	Equally



	the name of STK A/ C No. XXX after payment of debts		
13.	6,431 Shares at Kenya Electricity Generating Company Ltd (KenGen)	LNT JNM	Equally
14.	Shares in Safaricom Limited	LNT JNM	Equally
15.	Remainder of Cash in Ciana Cia Mumbi Self-Help Group Equity Bank A/C No. XXX	LNT JNM	Equally
16.	Remainder of Cash in Post Bank A/C No. XXX in the name of STK	LNT JNM	Equally
17.	Remainder of Cash in Vetngo 2012 Welfare Group A/C No. XXX	LNT JNM	Equally

8. There is a consent filed on 27<sup>th</sup> July 2020 signed by five of the seven beneficiaries. Two of the beneficiaries, TM and MM, are shown to have been under the age of majority at the time of filing the Summons for Confirmation of the Grant.

### Protests

9. There are three protests filed in this Cause. The first protest was filed by HNK. It is dated 28<sup>th</sup> January 2021. HN claims to be wife of the deceased. She claims that that she has one child with the deceased, AKT and that as such she and her son are entitled to a share of the estate. She has proposed the mode of distribution of the estate as captured in the table below:



No.	Asset	Beneficiary	Share
1.	Nairobi/Block 62/XXX	LNT (in trust for CMT)	Absolutely
2.	Kajiado/Olchoro-Onyore/XXX (measuring 6 acres)	To be divided as follows: 1. 1 acre to LNT 2. 1 acre to LNT (in trust for GKT, LNT, CMT and KKT) 3. 1 acre to JNM 4. 1 acre to JNM (in trust for TMT and MMT). 5. 1 acre to HNK 6. 1 acre to HNK (in trust for AKT)	Absolute Absolute Absolute Absolute Absolute Absolute
3.	Ngong/Ngong/XXX (0.045ha)	JNM (in trust for MMT)	Absolute
4.	Kajiado/Kaputiei-North/XXX (0.045ha)	HNK	Absolute
5.	Kajiado/Kaputiei-North/XXX (0.045ha)	HNK	Absolute
6.	Kajiado/Kaputiei-North/XXX (0.044ha)	HNK	Absolute
7.	Kajiado/Kaputiei-North/XXX (0.044ha)	HNK	Absolute
8.	Kajiado/Kisaju/XXX (4.04ha)	To be divided as follows: 1. 2 acres to LNT 2. 1 acre to LNT in trust for GKT, LN, CMT and KKT 3. 2 acres to JNM 4. 1 acre to JNM in trust for TMT and MMT 5. 2 acres to HNK 6. 1 acre	Absolute Absolute Absolute Absolute Absolute Absolute



		to HNK in trust for AKT	
9.	Plot No. XXX Isinya (Savanna)	HNK in trust for AKT	Absolute
10.	Kajiado/Kaputiei-North/XXX	JN in trust for TMT	Absolute
11.	Remainder of Cash in Co-operative Bank of Kenya Ltd Current A/c in the name of STK after payment of debts	LNT JNM HNK	Equally
12.	Remainder of Cash in I & M Bank in the name of STK A/C No. XXX after payment of debts	LNT JNM HNK	Equally
13.	6,431 Shares at Kenya Electricity Generating Company Ltd (KenGen)	LNT JNM HNK	Equally
14.	Shares in Safaricom Limited	LNT JNM HNK	Equally
15.	Remainder of Cash in Ciana Cia Mumbi Self-Help Group Equity Bank A/C No. XXX	LNT JNM HNK	Equally
16.	Remainder of Cash in Post Bank A/C No. XXX in the name of STK	LNT JNM HNK	Equally
17.	Mbobolulu, Kibera	LNT	Absolute

10. The second protest is by PMA, the mother of the deceased. It is dated 28<sup>th</sup> January 2021. Her claim is that the deceased was taking care of her during his lifetime and that upon his death, a meeting was held at Isinya Police Station where it was agreed that she would be receiving Kshs 20,000 per month from the estate of the deceased.



11. PMA wants a share of the money left in the deceased's bank accounts and a parcel of land next to her homestead which she claims was the inheritance of the deceased who was registered as the proprietor. She did not give the particulars of the land.
12. The third protest is by MNK. It is dated 25<sup>th</sup> January 2021. In that protest, M claims to be the wife of the deceased, married under Maasai Custom Law in 1995. She stated that she came with a five-year-old son to the marriage and that the deceased accepted her son as his son; that they got another child with the deceased and that the deceased had been maintaining them. She claimed that the deceased provided for her housing by paying rent amounting to Kshs 22,500 per month at [Particulars Withheld] Building, Tassia, Embakasi Nairobi. She stated that she is the second wife and her children are AK and VJMT.
13. MN has recognized LNT and her children as the first house and JNM and her children as the third house and has claimed that she and her children have been left out of the estate. She proposed that the estate be distributed as follows:



No.	Asset	Beneficiary	Share
1.	Nairobi/Block 62/XXX	LNT in trust for C	Absolutely
2.	Kajiado/Olchoro-Onyore/XXX	4 acres MN in trust for VJMT. 1 acre LN 1 acre JNM	Absolutely
3.	Ngong/Ngong/XXX	JNM in trust for MMT	Absolutely
4.	Kajiado/Kaputiei-North/XXX	LN in trust for KKT	Absolutely
5.	Kajiado/Kaputiei-North/XXX	LN in trust for GK and KK	Absolutely
6.	Kajiado/Kaputiei-North/XXX	MNK in trust for AK and VJM	Absolutely
7.	Kajiado/Kaputiei-North/XXX	HNK	Absolutely
8.	Kajiado/Kisaju/XXX	1. LN in trust for K/G/C 2. MN in trust for A/VM 3. JN in trust fro TM and MM	Equally
9.	Plot No. XXX Isinya (Savanna)	MN in trust for VMT	Absolutely
10.	Kajiado/Kaputiei-North/XXX	MNK in trust for AK	Absolutely
11.	Remainder of Cash in Co-operative Bank of Kenya Ltd Current A/c in the name of STK after payment of debts	LNT MN JNM HNK	Equally
12.	Remainder of Cash in I & M Bank in the name of STK A/C No. XXX after payment of debts	MN for school fees for school going children	Equal



13.	6,431 Shares at Kenya Electricity Generating Company Ltd (KenGen)	LNT MN JNM	Equally
14.	Shares in Safaricom Limited	LNT MN JN	Equally
15.	Remainder of Cash in Ciana Cia Mumbi Self-Help Group Equity Bank A/C No. XXX	MN JN For school going children	Equally
16.	Remainder of Cash in Post Bank A/C No. XXX in the name of STK	MN JN For school going children	Equally
17.	Remainder of Cash in Vetngo 2012 Welfare Group A/C No. XXX	MN JN For school fees of school going children	Equally
18.	Mbobolulu, Kibera	LN in trust of K and GT	Absolutely

14. The Administratrices filed Affidavits in opposition to the three protests and filed a Reply dated 25<sup>th</sup> June 2021 in respect to the Protest by MNK in which it is deposed that the Affidavit of Protest by MNK sworn on the 25<sup>th</sup> January 2021 is full of hearsay, is frivolous and an abuse of court process and should be dismissed; that the said Affidavit of Protest is ill-advised and is misconceived.
15. In respect to the Affidavit of Protest by PMA, the Administratrices have deposed in their Reply sworn on 25<sup>th</sup> June 2021, that PMA caused them to be summoned by the Police to Isinya Police Station where an agreement was signed to the effect that PMA be paid Kshs 20,000 and HNK be paid Kshs 40,000. They claimed that HN was not a wife to the deceased and that the letter from the Chief naming her as a wife was procured through misrepresentation; that the agreement signed at Isinya Police Station was signed through undue influence and intimidation of the police officers; that the mode of distribution proposed by PMAM is opposed and should be dismissed and that they are not opposed to supporting PMA M as they have always supported her.
16. In respect to the Affidavit of Protest by HNK, it is deposed through the Affidavit of the Administratrices dated 25<sup>th</sup> June 2021 that HN is a stranger to the estate of the deceased. They denied that she was a wife to the deceased and that the Kshs 40,000 being sent to her following the agreement signed at Isinya Police Station was as a result of undue influence and intimidation of the police officers at that station. It was deposed that the mode of distribution proposed by HN cannot be granted because HN has not proved that she is a dependant or beneficiary of the estate of the deceased.



17. The administratrices also filed a Supplementary Affidavit dated 5<sup>th</sup> October 2023 in respect to the Affidavits of Protest filed by the three protestors in which they have reiterated the averments contained in their reply to the Affidavits of Protest by the three Protestors shown above in this judgment.

### Oral evidence

18. As can be seen from the record, the directions of the court (Mwita, J) are to the effect that the Summons for Confirmation be heard and anyone with a protest should raise it to enable the court deal with all the issues during the hearing and determination of the Summons for Confirmation. The Protestors were directed to commence giving evidence.
19. PMA, testified first. She is the mother of the deceased. Her claim is based on dependency. She relied on her Affidavit of Protest dated 28<sup>th</sup> January 2021 which she adopted as her evidence in chief. In sum, PMA's case is that the deceased was taking care of her during his lifetime and therefore she requires a share of the estate of the deceased in order to continue with the support she had enjoyed during her son's lifetime.
20. PMA also relied on a document she referred to as an agreement reached at Isinya Police Station where the family had referred this matter. She has deposed that the said meeting was attended by L, J and HN, herself and her son J and that it was agreed that the estate of the deceased should pay her Kshs 20,000 through Mobile Money transfer (Mpesa) which money she has been receiving. She wants a share of the money in the deceased's bank accounts as well as a share of the parcel of land next to her homestead.
21. PMA deposed, further, that the deceased took LN to her home and introduced her as his wife; that they lived together as husband and wife at Ayany Estate Kibera; that they sired three children together, namely K, K and M. She deposed that L left her matrimonial home and her young children citing marital problems and stayed away for 18 years, only to return during the burial of the deceased. She stated that the deceased took HN to her and introduced her as his wife; that they lived together as husband and wife at Ayany Estate Kibera and that they got one child, K.
22. She stated that the deceased also took J to her and introduced J as his wife and that their union was blessed with two children M and M. PMA stated that at the time of his death, the deceased had two wives, HN and J.
23. HNK testified second. She relied on her Affidavit of Protest dated 28<sup>th</sup> January 2021. In that Affidavit of Protest, HN has deposed that she met the deceased in 1996 and they stated a relationship as business associates at a slaughter house; that the friendship blossomed into husband and wife relationship; that they lived in Rongai and Kiserian and Kibera; that she was introduced to deceased's mother and that the deceased and some elders visited her home for introduction according to Kikuyu customs.
24. HN stated that she got one child with the deceased, A K; that she met L and J in hospital in 2013 during the hospitalization of the deceased following a road traffic accident; that the deceased died in India where he had gone for treatment and was buried in Kiserian on Kajiado/Kisaju/XXX and that L, J and herself together with their children attended the burial. She stated, further, that on 7<sup>th</sup> March 2018 all parties attended a meeting at Isinya Police Station where it was agreed that she will be receiving Kshs 40,000 per month but this payment stopped after she filed a case in court.
25. HN claims to be a beneficiary together with her son by virtue of her marriage to the deceased. She relied on a letter from the area chief dated 23<sup>rd</sup> July 2018 where she is listed as the 2<sup>nd</sup> wife of the deceased. She also attached copy of a birth certificate of her son A K listing the deceased as the father; a copy of an agreement dated 7<sup>th</sup> March 2018 showing that she was to receive Kshs 40,000 every month from the monies collected from the rentals of the properties forming the estate while deceased's mother was to



- receive Kshs 20,000 per month. HN also attached copies of bank statement from Equity Bank showing her account used to receive Kshs 40,000 from CMT.
26. HN's proposal on how the estate of the deceased should be distributed is captured above in this judgment.
  27. On cross-examination, HN acknowledged L and J as her co-wives. She stated that she met MN after the death of the deceased and that she is aware that M has a daughter, VM with the deceased.
  28. MNK testified that she filed a Protest to complain about the mode of distribution of the estate of the deceased and that deceased had three (3) wives, LN, herself and JN. She testified that she married the deceased through a traditional marriage in 1995; that she was taken to deceased's home and that her marriage ceremony was conducted on 24<sup>th</sup> December 2001 in deceased's home; that at the time she met the deceased, she had a five year old son DAK who was adopted by the deceased as his son and that she got another child VM with the deceased; that the deceased used to pay school fees and other expenses for the children; that she would get Kshs 16,000 per month in addition to deceased paying school fees for the children; that deceased used to pay rent, Kshs 22,500, for her in Embakasi where she lived.
  29. On cross examination, M said that she has not included PMAM in her proposed mode of distribution because PMA has a two-bedroom house for her use until she passes on. She said she had taken the deceased to court for maintenance and payment of school fees for her daughter; that she knew L because she found her when she got married to the deceased but L was not introduced to her by the deceased but J was introduced to her and that she met HN at her mother in law's house.
  30. CMT testified on 5<sup>th</sup> October 2023. She is one of the administratrices of the estate. She relied on the Supplementary Affidavit sworn on the 5<sup>th</sup> October 2023 and the letter of the Chief dated 10<sup>th</sup> April 2018 which indicates that the deceased had two wives, LNT and JNM and their children listed in that letter as the only beneficiaries of the estate.
  31. On cross-examination, C reiterated the contents of the Supplementary affidavit and admitted to living in the commercial building constructed on Kajiado/Kaputiei North/XXX, XXX and XXX and earning a salary of Kshs 15,000 per month from the rental collection from the properties forming the estate. She also admitted that other family members occupy rooms in the property belonging to the estate. She maintained that the deceased had only two wives, her mother LN and JNM. She denied that HN and MN are beneficiaries of the estate by virtue of their marriage to the deceased.
  32. C claimed that they were coerced and intimidated to sign the agreement to pay PMAM and HN Kshs 20,000 and 40,000 respectively at the Isinya Police Station.
  33. The administratrices did not call any other witness.
  34. At the close of the case, parties were directed to file written submissions. I also directed, upon application by parties, that an estate agent be appointed for purposes of managing the estate of the deceased in terms of collecting rent and depositing it in the bank account opened in the three names of the administratrices who were required to file a full statement of account for all the monies collected from the estate and the expenditures. It took a while to settle for an estate agent until 19<sup>th</sup> September 2024 when the parties agreed on the appointment of Eneo Capital Ltd and entered into a consent that: Eneo carries out valuation of the all the properties forming assets of the estate of the deceased and provide detailed report of income of the properties generating income and give a detailed report of money they have collected from the estate.
  35. I have seen the report filed herein by the estate manager and will revert to it in the course of this judgment.



## **Protestors' submissions**

36. HN and PMAM filed joint submissions dated 6<sup>th</sup> November 2023. In sum, it is submitted that PMA, the mother of the deceased is a dependant who relied on her deceased son for upkeep and that after the death of the deceased, the beneficiaries entered into a 'property agreement' in which it was agreed that PMA will be receiving from the estate of the deceased Kshs 20,000 per month. Reliance was placed on section 29 of the *Law of Succession Act* which defines who a dependant is and on *In re Estate of Robert Musyoka Mueti (Deceased)* [2020] eKLR where the court held that parents of the deceased were dependents of the deceased and are entitled to inherit from his estate.
37. In respect to HN, it was submitted that she was the wife of the deceased, a fact that was confirmed by PMAM who admitted that HN was one of the wives of the deceased. It was submitted that HN met the deceased in 1997 and they both got A K in 2003 whose birth certificate, obtained during the lifetime of the deceased, was produced as evidence; that the Chief's letter dated 23/7/2018 confirmed that HN was the wife of the deceased.
38. It was submitted that the area Chief, who had issued two contradicting letters identifying the beneficiaries of the deceased was not called to testify and that there is no evidence to prove that the chief's letter relied on by HN was a forgery. Reliance was placed on the Court of Appeal decision, *BKN & another v TNW* [2019] eKLR to support the submissions that a birth certificate is proof that A K is the son of the deceased. They also relied on the 'property agreement' in which it was agreed to pay HN Kshs 40,000 per month as proof that HN was recognized as a beneficiary of the estate.
39. It was submitted that the deceased was polygamous and that his estate should be distributed among all the beneficiaries and dependants. It was submitted that the mode of distribution proposed by the administrators is unfair and should not be considered.
40. MN's submissions are dated 20<sup>th</sup> January 2024. She has raised two issues for determination, which I have rephrased as follows:
  - i. Whether she and her two children are beneficiaries entitled to the estate of the deceased.
  - ii. What is the mode of distribution of the estate?
41. In sum, MN has submitted that she has proved that she and her two children are beneficiaries of the estate of the deceased by virtue of being wife and children of the deceased. She has relied on *Rono v Rono* Civil Appeal No. 66 of 2002, among other authorities cited in her submissions to support her submissions that the estate of the deceased should be distributed between the 'houses according to the number of children in each house, but also adding any wife surviving the deceased as an additional unit...'
42. M urged that this court should consider that the administratrices have, since the demise of the deceased, continued to benefit from the estate to the exclusion of her and her children. M has urged that this court should distribute the estate as proposed by her in her proposed mode of distribution.

## **Administratrices' Submissions**

43. The submissions are dated 20<sup>th</sup> December 2023. The administratrices have raised three issues for determination:
  - i. Whether the 1<sup>st</sup> and 3<sup>rd</sup> Protestors were wives of the Deceased.
  - ii. Whether the 2<sup>nd</sup> Protestor was a dependant of the Deceased.



- iii. Who should pay the costs of these proceedings.
44. In sum, it was submitted that the 1<sup>st</sup> and 3<sup>rd</sup> Protestors did not prove they were married to the deceased either statutorily or through presumption of marriage; that they did not produce a certificate of marriage as envisaged under the *Marriage Act* or tender evidence of a custom law marriage; that they did not produce evidence to satisfy the requirements of a presumption of marriage as contemplated under MNK v POM [2021] eKLR where Supreme Court of Kenya laid down the parameters to be met for a presumption of marriage to exist as follows:
- i. The parties must have lived together for a long period of time.
  - ii. The parties must have the legal right or capacity to marry.
  - iii. The parties must have intended to marry.
  - iv. There must be consent by both parties.
  - v. The parties must have held themselves out to the outside world as being a married couple.
  - vi. The onus of proving the presumption is on the party who alleges it.
  - vii. The evidence to rebut the presumption has to be strong, distinct, satisfactory and conclusive.
  - viii. The standard of proof is on a balance of probabilities.
45. It was submitted that the Kshs 40,000 per month paid to the 3<sup>rd</sup> Protestor was based on an agreement entered at the Police Station under duress and not in recognition of the 3<sup>rd</sup> Protestor as a wife of the deceased.
46. In regard to PMA, it was submitted that it is not in doubt that she is the mother of the deceased. However, PMA failed to prove her dependency on the deceased during his lifetime.
47. The administratrices urged the court to dismiss the three protests and award costs to them.

### **Analysis and determination**

48. I have taken time to read the entire court record. I have understood the respective positions of all the parties in this Cause. I have identified the following as the issues requiring determination:
- i. Whether MN and HNK were married to the deceased and therefore beneficiaries of his estate? Alternatively, who were the wives of the deceased?
  - ii. Whether PMA was a dependant of the deceased and therefore entitled to a share of his estate.
  - iii. How should the estate of the deceased be distributed?
49. My understanding of my mandate in resolving the issues identified above is that it is the duty of this court to determine who the beneficiaries of the estate subject of this Cause; to identify the properties forming the estate of the deceased and to determine the mode of distribution of the estate to the identified beneficiaries.
50. The deceased died on 4<sup>th</sup> January 2018 in Krishna Shalby Hospital, India, while undergoing treatment, as shown in the attached Certificate of Death dated 12<sup>th</sup> March 2018. Under Section 2 (1) of the *Law of Succession Act*, Cap. 160, Laws of Kenya (the Act), the administration of the estate of the deceased falls under this legislation. Section 2 (1) provides as follows:



- (1) Except as otherwise expressly provided in this Act or any other written law, the provisions of this Act shall constitute the law of Kenya in respect of, and shall have universal application to, all cases of intestate or testamentary succession to the estates of deceased persons dying after the commencement of this Act and to the administration of estates of those persons.
51. The deceased died intestate. Intestacy is explained under Section 34 of the Act to mean “A person is deemed to die intestate in respect of all his free property of which he has not made a will which is capable of taking effect”.
52. An interesting scenario has been presented to this court. There are four women, each claiming to be a beneficiary of the estate of the deceased by virtue of marriage to him. LNT, JNM, HNK and MNK claim to have been married to the deceased and therefore beneficiaries of the estate of the deceased, together with their children.
53. The law, Section 107 (2) of the *Evidence Act*, Cap. 80 Laws of Kenya, is clear that the burden of proof lies on the person who is bound to prove the existence of any fact. The burden of proof of the fact of marriage of any of the four (4) women to the deceased lies on each of them as dictated by section 109 of the *Evidence Act* that provides that:
- The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.
54. From my understanding of the evidence of all the parties, there seems to be a silent belief that it is a settled fact that JNM and LNT are wives (widows) of the deceased and therefore they automatically qualify to inherit. However, my considered view is that each of the four women must present evidence to prove that they were married to the deceased. Each of them must present tangible evidence of some form of a legally recognizable marriage relationship with the deceased in order to persuade this court that they are entitled to the estate of the deceased as wives or widows of the deceased.
55. This Cause, like any dispute before the courts, has its own dynamics. The *Law of Succession Act* under Section 3, defines ‘spouse’ as ‘a husband or a wife or wives recognised under the *Marriage Act* (Cap. 150), while ‘wife’ is defined as, “wife” includes a wife who is separated from her husband and the terms “husband” and “spouse”, “widow” and “widower” shall have a corresponding meaning;
56. Further, section 29 (a) of the Act defines who a dependant, in respect to wife, 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 (emphasis is mine).
57. Without belabouring the point, the record shows that there is no evidence presented to this court by either of the four women by way of a marriage certificate or registration of marriage certificate to prove their respective assertion that any of them was married to the deceased. Therefore, their claim to have been married to the deceased rests on their word that they were married to him. PMA, the mother of the deceased told the court in her Affidavit of Protest, which she adopted as her evidence in chief, that her son, the deceased, introduced LN to her as a wife; that L and the deceased lived together as man and wife in Ayany Kibera, and sired three children, K,K and M; that L fled her matrimonial home leaving the children behind, citing matrimonial problems and that L did not return to her matrimonial home for 18 years and only returned for the burial of the deceased.



58. PMA deposed that after L left the deceased, he took HN to her and introduced her as his wife; that they lived as husband and wife and got one child K; that the deceased introduced JNM to his mother as his wife and that the deceased and J lived together and got two children M and M. PMA did not mention MN in her Affidavit. However, in her cross-examination, PMA told the court that she had seen MN at her (PMA's) home when she went there with the deceased. PMA told the court that the deceased and MN used to live together although the deceased did not tell her who MN was. She said she knew that the deceased and M got a child together called M. She identified M (Victoria) in Court during her testimony as the child of MN and the deceased and said that she knows M was her grandchild.
59. J and L did not testify. The Administratrices called C M as the only witness in support of the case for the Administratrices.
60. The record of the court shows that there are two letters from the chief, one Ibrahim N. Sankaire, of Olchoro-Onyore Location, Kiserian. One letter is dated 10<sup>th</sup> April 2018. This letter has listed LNT and JNM as wives of the deceased and the following as children of the deceased:
- i. KKT
  - ii. GKT
  - iii. CMT
  - iv. TMT
  - v. MMT.
61. This letter is the one relied on by the administratrices in their petition for letters of administration.
62. The second letter from Chief Ibrahim N. Sankaire, is dated 23<sup>rd</sup> July 2018. It was attached to pleadings of HNK. It has listed the wives and children of the deceased as follows:
- i. LNT
  - ii. HNK
  - iii. JNM
  - iv. KKT
  - v. GKT
  - vi. CMT
  - vii. AKT
  - viii. TMT
  - ix. MMT
63. It is instructive to note that none of these letters has listed MN as wife of the deceased. On her part, MNK in her court documents, has listed herself and her children AK and VM, as second house. M has omitted HN and her children as wife and children of the deceased. All the four women have claimed to have been married to the deceased and as stated above, but they have not provided any evidence to that effect, either a certificate of marriage or registration of marriage. This court will have to resort to what the evidence states in respect to their alleged marriage to the deceased.



64. It is trite that any party claiming marriage under any of the African custom law must present evidence to prove that the alleged marriage meets the threshold of a marriage under that custom in order to make that marriage legally recognizable under our laws.
65. Can this court, therefore, resort to the presumption that the four women were married to the deceased? The peculiarity of this case is that the deceased adopted a practice of taking any of the four women to his mother and introducing each of them to her as a wife, although PMA denied that MN was introduced to her as such. There is no evidence from PMA or any other relative of the deceased, or for that matter, from any of the four women, that any custom law rites and rituals relating to a custom marriage, be it Kikuyu or Maasai, were performed to signify any marriage was entered into between the deceased and any of the four women.
66. As described in paragraph 65, above, the deceased chose the practice and lifestyle stated above. As stated in this judgment, it is taken as settled that L and J were the wives of the deceased and therefore the two women and their children are the rightful heirs to the estate. Yet, L is supposed to have left her matrimonial home for 18 years. I have no evidence from her denying that this was the case.
67. I have read the entire court record. Other than what the parties are calling a ‘property agreement’ entered into at Isinya Police Station, which the administratrices are claiming was arrived at through intimidation and coercion, in which HN was to receive Kshs 40,000 per month as upkeep and PMA Kshs 20,000, MN has attached mpesa statements showing that she used to receive money from the deceased. M has also attached a court order for maintenance of M. M testified that she went to court to seek maintenance and school fees for the children, which orders she obtained.
68. As stated in this judgment, the deceased entered into cohabitation relationship with each of the four women claiming to be his wives (widows). They entered into the cohabitation relationship before the coming into force of the *Marriage Act* on 20<sup>th</sup> May 2014. The deceased died on 4<sup>th</sup> January 2018. The *Marriage Act* allows parties to register their custom marriage and obtain a certificate. The deceased did not do so. Therefore, the relationship he had with any of the four (4) women can only be termed as cohabitation or ‘marriage by cohabitation.’ This is what is referred to as ‘presumption of marriage’.
69. In *MNK v POM; Initiative for Strategic Litigation in Africa (ISLA) (Amicus Curiae) (Petition 9 of 2021) [2023] KESC 2 (KLR) (27 January 2023) (Judgment)*, the Supreme Court of Kenya states that:
- “...Presumption of marriage is a well-settled common law principle that long cohabitation of a man and woman with a general reputation as husband and wife raises a presumption that the parties have contracted marriage. However, a presumption of marriage is a rebuttable presumption and can disappear in the face of proof that no marriage existed.”
70. Further, Section 119 of the *Evidence Act*, provides as follows:
- The court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.
71. To settle this issue of existence of marriage between the deceased and the four (4) women claiming to be wives (widows), I am guided by the evidence of each of them through their pleadings and oral evidence, for those who testified, that they were married to the deceased. Proof of long cohabitation is based on the children born of each of the women. Further, the evidence of PMAM, the mother of the deceased that the deceased took each of the four (4) women to her and introduced them to her,



although she stated that MN was not introduced to her as a wife. She however acknowledged VM as the daughter of her late son and MN.

72. Article 45 (2) of the Constitution of Kenya, 2010 gives right to every adult to marry a person of the opposite sex, based on of Kenya, 2010 gives right to every adult to marry a person of the opposite sex, based on the free consent of the parties. The deceased chose the life he wanted to live. He met each of the four (4) women, became friends with each and introduced them to his mother. He cohabited with each and they got children through that cohabitation. There may not be a witness, other than the women themselves, that society held them as wives of the deceased through long cohabitation, however, given that there are children from that cohabitation and proof of payment of money to M and HN, and in the absence of any tangible evidence that any of the four (4) women before the court was married under any form of recognizable law or custom, it is my considered view that all the four (4) women, L, J, HN and M are wives or widows of the deceased. That each of the children, except AK, are children of the deceased.

73. I have considered all the evidence adduced and I did not find any evidence that the deceased adopted AK as his own son. The order of the court attached to MN's papers refer to M and not A. I therefore have no evidence to demonstrate that the deceased had adopted A as his own son or that he educated or maintained him as his own son.

74. In respect to PMA, evidence available, which has not been controverted, shows that she is the mother of the deceased. She has claimed that the deceased was maintaining her. She has also relied on the agreement entered into at Isinya Police Station that she would be paid Kshs 20,000 per month for upkeep. Her evidence that she was a dependant of the deceased was denied by the Administratrices. I have considered this evidence and I find no tangible evidence contrary to the evidence that PMAM was a dependant of the deceased in accordance with section 29 of the Act, which provides that:

For the purposes of this Part, "dependant" means—

.....

(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;

.....

75. It is my finding therefore that PMAM is entitled to a share of the estate of the deceased. She has also claimed she is entitled to inherit land from the deceased. This evidence is not clear to the court as the land she was referring to is not specified. Her claim will be determined at the time of distribution of the estate.

76. Before resorting to the law for guidance on how the estate of the deceased shall be distributed, it is prudent to clarify what properties form the estate of the deceased. In the course of these proceedings, this court appointed Eneo Capital Ltd, as the property manager of the estate of the deceased. With the consent of the parties, Eneo Capital Ltd was mandated:

- i. to carry out valuation of all the properties forming assets of the estate of the deceased;
- ii. to provide detailed report of income of the properties generating income;
- iii. provide detailed report of money they have collected from the estate of the deceased;
- iv. to file that report within 14 days from 19<sup>th</sup> September 2024.



77. Eneo Capital Ltd prepared and filed that report. It is a detailed report. For purposes of this judgment I will summarize the report to bring this judgment into context.
78. The list of properties forming the estate of the deceased captured in the documents filed by the administratrices are as follows:
- i. Nairobi/Block 62/XXX
  - ii. Kajiado/Olchoro-Onyore/XXX
  - iii. Ngong/Ngong/XXX
  - iv. Kajiado/Kaputiei-North/XXX
  - v. Kajiado/Kaputiei-North/XXX
  - vi. Kajiado/Kaputiei-North/XXX
  - vii. Kajiado/Kaputiei-North/XXX
  - viii. Kajiado/Kisaju/XXX
  - ix. Plot No. XXX Isinya (Savanna)
  - x. Kajiado/Kaputiei-North/XXX
  - xi. Cash in Co-operative Bank of Kenya Ltd Current Account
  - xii. Cash in I & M Bank A/C No. XXX
  - xiii. 6,431 Shares at Kenya Electricity Generating Company Ltd (KenGen)
  - xiv. Shares in Safaricom Limited
  - xv. Cash in Ciana Cia Mumbi Self-Help Group Equity Bank A/C No. XXX
  - xvi. Cash in Post Bank Account No. XXX
  - xvii. Cash in Vetngo 2012 Welfare Group Account No. XXX
79. HN and MN introduced another property called Mbobolulu in Kibera. This property was not captured in the documents filed by the administratrices. It is however included in the Eneo Capital Ltd report. The value of the shares and the amount of cash held in the various bank accounts listed have not been specified by the administratrices.
80. The description of the properties and their value are shown as follows:
- a. Nairobi/Block 62/XXX – this property sits of 0.0169 ha (0.9417 acres). It is a three (3) storey block of flats of one (1) and two (2) bedrooms. Eneo Capital Ltd report has indicated that at the time of the valuation, the property was let out and was earning Kshs 135,000 per month when fully occupied. The market value has been given in the report as Kshs 15,000,000.
  - b. Kajiado/Olchoro-Onyore/XXX – the property sits on 2.428ha (6.0 acres) of land. It is both agricultural and residential. There is a 6-bedroom maisonette on the property and its market value is Kshs 16,250,000.
  - c. Ngong/Ngong/XXX – this property occupies 0.045ha (0.1112 acres). It is a commercial developed property of 3 storeys with shops, bar, daily rental units of bedsitters, singles and double rooms. The shops and the bar earn a rental income of Kshs 75,000 per month while



the daily rental units earn Kshs 20,800 per month. The market value has been given as Kshs 25,300,000.

- d. Kajiado/Kaputiei-North/XXX/XXX/XXX/XXX – These are commercial plots which are developed with incomplete commercial building block spread across the four titles. It is located in Isinya Town. Only two (2) shops are let out with unascertained rent. The property has a market value of Kshs 38,500,000.
  - e. Kajiado/Kisaju/XXX – this is agricultural land measuring 4.04ha (9.9831 acres). The land is developed with semi-permanent structure including SQ. The land is under natural vegetation. The market value of this property is Kshs 50,000,000.
  - f. Plot No. XXX Isinya (Savanna) – This property is located in Isinya Town next to the market. It is a commercial property measuring 0.045ha. It is a developed commercial block of 2 storeys with three (3) shops, 33 single rooms situated both on the ground and 1<sup>st</sup> floors, one office, one restaurant. The property is let out and when fully occupied, it gives a monthly rental income of Kshs 555,000. The market value of this property is Kshs 16,700,000.
  - g. Kajiado/Kaputiei-North/XXX – this property measures 0.05ha (0.1236 acres). It is a residential building with 12 double room units and one (1) single room unit. The property was fully rented out during the time of valuation and was earning a monthly rental income of Kshs 79,500. Its market value has been given as Kshs 10,500,000.
  - h. Mbobolulu Kibera – this is a commercial plot measuring 0.0130ha (0.0321 acres). It is developed with 7 small shops and 16 single rooms. It was let out at the time of the valuation and was earning Kshs 80,000 per month when fully occupied. The market value has been given as Kshs 10,500,000.
81. As indicated in this judgment, the full value of the estate is not ascertainable for reasons that the value of the shares in different institutions and cash held in banks have not been disclosed in the evidence.
82. Eneo Capital Ltd has expressed challenges in the management of some of the properties, particularly the properties situated in Ayany and Matasia due to family members, specifically C and J, who failed to hand over control of the properties to Eneo and who instructed tenants to pay rent to the two of them and not Eneo. The report also shows that some family members occupied some units in Isinya Commercial building without paying rent. The financial sumM of the period from February 2024 to April 2025 shows that the properties generated income amounting to Kshs 2,374,500 and expenses of Kshs 3,872,388 giving a deficit of Kshs 1,497,888, which amount includes valuation expenses.
83. Having determined the assets of the estate and partial value, I now turn on the issue of distribution. The four women claiming to be wives (widows) of the deceased have provided their respective proposed mode of distribution, each mode specifically skewed to their benefit. None of the proposed modes of distribution has catered for all the four of them. Save for J and L who seem to agree on working together to the exclusion of HN and M, the others are working alone with their interest amplified more than the interest of the rest.
84. Section 40 of the [Law of Succession Act](#) will provide this court with the solution. It provides for the method to be adopted in distributing the estate amongst beneficiaries in a polygamous family as follows:
40. Where intestate was polygamous



- (1) Where an intestate has married more than once under any system of law permitting polygamy, his personal and household effects and the residue of the net intestate estate shall, in the first instance, be divided among the houses according to the number of children in each house, but also adding any wife surviving him as an additional unit to the number of children.
- (2) The distribution of the personal and household effects and the residue of the net intestate estate within each house shall then be in accordance with the rules set out in sections 35 to 38.

85. This provision will guide this court in determining the mode of distribution of this estate. This court has determined that all the four women are entitled to the estate as widows of the deceased. It is my view therefore that in line with section 40, above, the estate of the deceased shall be distributed in accordance with that section. There are 4 houses as follows:

1<sup>st</sup> House

- i. LNT (widow)
- ii. CMT (daughter)
- iii. Kelvin K (son)
- iv. GKT (son)

2<sup>nd</sup> House

- i. JNM (widow)
- ii. TMT (daughter)
- iii. MMT (son)

3<sup>rd</sup> House

- i. HNK (widow)
- ii. AKT (son)

4<sup>th</sup> House

- i. MNK (widow)
- ii. VMT (daughter)

86. As dictated under Section 40 of the *Law of Succession Act*, the distribution of an estate of a polygamous man in an intestacy follows two stages. The first stage is as provided under Section 40(1) of the Act, this is division among the houses according to the number of children in each house, but also adding any wife surviving him as an additional unit to the number of children.

87. The division of this estate in the first instance shall be among the houses according to the number of children in addition to the wife (widow) as a unit. Therefore, the units are as follows:

- a. 1<sup>st</sup> House has four (4) units
- b. 2<sup>nd</sup> House has three (3) units
- c. 3<sup>rd</sup> House has two (2) units
- d. 4<sup>th</sup> House has two (2) units



88. Guided by sections 26, 27 and 28 of the Act, it is my considered view that PMA will be better off by having a share of the estate guided by section 27 of the Act which provides that:

In making provision for a dependant the court shall have complete discretion to order a specific share of the estate to be given to the dependant, or to make such other provision for him by way of periodical payments or a lump sum, and to impose such conditions, as it thinks fit.

89. The net estate, after payment of all debts and expenses of administration and management by Eneo Capital Ltd and any other debtors, shall be distributed in accordance with section 40 of the Act amongst the four (4) houses in terms of the units of the houses as specified above.

90. Further, justice shall be served if this court provided for PMAM, from the estate, which I hereby do, by a lump sum payment out of the estate of the deceased instead of periodic payments to avoid disputes in future. Having taken into account the circumstances listed under Section 28 of the Act and the fact that PMA has been receiving Kshs 20,000 per month as well as the inflation over the years and the size of the estate, it is my considered view that a sum of Kshs 5,000,000, paid in lump sum from the estate of the deceased, to PMA will cater for her needs.

91. After the estate is distributed to the units as per section 40 of the Act as specified above, the second stage of distribution under section 40 (2) of the Act will kick in as follows:

The distribution of the personal and household effects and the residue of the net intestate estate within each house shall then be in accordance with the rules set out in sections 35 to 38.

92. My understanding of these provisions is that the share that goes to the children should be equal to all the children of each house irrespective of gender.

93. I am aware that L and J and their children have been enjoying the proceeds from the estate with some of them occupying the properties belonging to the estate without paying rent. I am also aware that Eneo Capital Ltd did not manage to access all the properties due to interference by the administratrices. The administration of the estate was not carried out according to the law. It has been difficult to determine the amount of the monies collected and utilized by the administratrices and the children of L and J.

94. Going forward, and to avoid further conflict among the beneficiaries, it is the view of this court that the parties should amicably share the property as guided in this judgement. Should it prove difficult to share out the assets identified and funds in the banks as well as shares, then the properties ought to be sold and the proceeds shared out as provided in this judgment.

95. The parties shall work out the percentages of the shares per unit in each house in order to arrive at the correct shares for each beneficiary after payment of debts including the amount allocated to PMAM, Eneo Ltd charges and costs of this cause which shall be paid by the estate.

96. Either party shall be at liberty to apply.

97. Orders shall issue accordingly.

**DATED, SIGNED AND DELIVERED THIS 2<sup>ND</sup> OF SEPTEMBER 2025 THROUGH VIRTUAL LINK.**

**S. N. MUTUKU**

**JUDGE**



In the presence of:

1. Ms Gathirimu holding brief for Mr. Sigoma for Administratrices
2. Mr. Njugi for MN, Protestor
3. Ms Kinyanjui for HN and PMAM, Protestors

