



**In re Estate of Stephen Kemei Asis (Deceased) (Succession Cause
238 of 2001) [2024] KEHC 14978 (KLR) (29 November 2024) (Judgment)**

Neutral citation: [2024] KEHC 14978 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE 238 OF 2001
JRA WANANDA, J
NOVEMBER 29, 2024**

N THE MATTER OF THE ESTATE OF STEPHEN KEMEI ASIS (DECEASED)

BETWEEN

CHRISTINA JEPTIONY KEMEI PETITIONER

AND

MONICA KEMEI OBJECTOR

JUDGMENT

1. I took over this matter when it came up before me for the first time on 13/02/2023 at which time it was already partly-heard (viva voce) before Hon. Justice Ogola.
2. The background of the matter is that the deceased, Stephen Kemei Asis, died on 9/11/1993 at the age of 63 years old. He left behind the property known as Nandi/Kiminda/308 whose inheritance is evidently the motivation behind this long-standing Succession battle. The dispute has been litigated in different Courts for almost 30 years now and both the Petitioner and the Objector are now in their 80-90s in terms of age, sickly and visibly tired.
3. From the record, I gather that the parties herein had initially allegedly jointly applied for Grant of Probate of Letters of Administration over the estate of the deceased in Kapsabet Senior Resident Magistrate's Court Succession Cause No. 20 of 1997. The Objector later disowned the said Succession Cause and filed her own Cause in this Court, namely, Eldoret High Court Succession Cause No. 32 of 1997 in which a Grant of Letters of Administration was issued to her on 7/12/1998. The Grant was later confirmed on 4/03/1999 and the entire property, Nandi/Kiminda/308 allocated to the Objector as the sole beneficiary. The Grant was however later revoked on 17/11/1999 by Hon. Nambuye J (as she then was). Subsequently, the said Kapsabet Senior Resident Magistrate's Court Succession Cause No. 20 of 1997 was, on account of issues of pecuniary jurisdiction, coupled with disagreements between the parties, subsequently transferred to this Court and assigned the present case number, namely, Eldoret High Court Succession Cause No. 238 of 2001.



4. Pursuant to the said transfer and upon a consent later recorded, I also gather that the Petitioner was allowed to withdraw the earlier Petition and filed a fresh one on 27/05/2004, through Messrs Birech Ruto & Co. Advocates. In the fresh Petition, the Petitioner, claiming as a widow, listed 12 persons (including herself and the Objector as the 2 widows), as the survivors of the deceased. However, by the Objection filed on 29/07/2004 through Messrs Annasi Momany & Co. Advocates, the Objector challenged the Petition and also filed a Cross-Petition of her own. The Objector's grounds for raising the challenge were that she was the only surviving widow of the deceased and that the Petitioner was not a widow and thus not entitled to the Grant and neither was she a beneficiary.
5. The record is not so clear but it appears that at some point, the earlier Objection dated 29/07/2004 was withdrawn by consent and replaced with a fresh one filed on 15/07/2011, together with a fresh Cross-Petition. The grounds cited were similar to those raised earlier and it is this Objection that is now the subject hereof and which proceeded for viva voce trial.
6. For the above reasons, to my knowledge and from my careful perusal of the record, a Grant of Letters of Administration has never been issued over the estate, not even gazettment of the Petition seems to have been done.
7. In the Affidavit filed in support of the fresh Objection, the Objector deponed that she got married to the deceased in 1957 when the deceased was still a bachelor, and that the deceased never in his lifetime married another woman. She denied that she co-Petitioned for the Grant in Kapsabet Succession Cause No. 20 of 1997 and also denied that the Petitioner is a beneficiary to the estate or a widow to the deceased. She further denied that the estate has no liabilities or that the estate was valued at only Kshs 100,000/-. She then submitted that she was herself born in 1938 and thus it was not true that she was 55 years old as alleged. She also deponed that Charles Kemei, Jane Jepngetich, Alexander Kemei, David K. Kurgat and Nicholas Kemei are not children of the deceased,
8. She then contended that the value of the estate was more than Kshs 5 Million and that the deceased had a debt of Kshs 100,000/- at Standard Chartered Bank, that it is her who paid the same and that the liability arose because the parcel of land Nandi/Kiminda/308 was mortgaged to secure the said loan. She deponed further that Messrs Birech, Ruto & Co. Advocates was never appointed to file the Petition, that the Petitioner had filed 2 different Petitions in the matter, and that the Petition filed in Kapsabet had never been withdrawn. She also claimed that the deceased and the Petitioner had never lived together. She further pointed out that although the Petition was filed on 17/03/1997, the Affidavit thereto was sworn on 19/03/1997. In conclusion, she deponed that the deceased was survived by Joseph Kiplimo Kemei, Jacob Kipkemboi Kemei, Pius Kiplagat Kemei, Lucy Cherubet, Thomas Kiptoo Kemei and Ursila Chepchichir.

Administrators' Replying Affidavit

9. In opposing the Application, the Petitioner filed a Replying Affidavit on 22/10/2018 through Messrs Birech, Ruto & Co. Advocates. She deponed that she got married to the deceased under Nandi customary laws at Aldai within Nandi County in the year 1957 as the 1st wife and that she is therefore the 1st widow and beneficiary of the estate. She deponed further that they were blessed with 5 children, namely, Charles Kemei, Jane Jepngetich, Alexander Kemei, David K. Kurgat and Nicholas Kemei. She contended further that she learnt that the deceased was cohabiting with the Objector at Kapsabet in the year 1960 and acknowledged that the Objector is indeed her co-wife, has 6 children with the deceased and that she is a co-widow and also a beneficiary to the estate. According to the Petitioner therefore, the deceased was survived by the 2 widows and 11 children. She also averred that the Objector had



concealed material facts having not disclosed the assets of the deceased and accused her for continued intermeddling with the estate.

Objector's Replying Affidavit

10. In a rejoinder, the Petitioner filed a Supplementary Affidavit on 23/10/2018. She basically reiterated matters already deponed by her, namely, that she was the only wife of the deceased and thus, the only widow, that the Petitioner and her children are not beneficiaries of the estate as the Petitioner is not her co-wife, and that the deceased was survived by only 1 widow (herself) and 6 children, and not 11 children as alleged by the Petitioner. She then alleged that the Petitioner is in fact, wife to the Objector's brother-in-law, one James Bruce.

Hearing of the Objection

11. Directions were then given that the Objection would be heard by way viva voce evidence. Pursuant thereto, the parties filed respective Witness Statements and bundles of documents. Although I have not come across any Notice of Change in the file, I notice that by this time, Messrs Bitok & Sambu Advocates appears to have taken over conduct of the Petitioner's case in place of Messrs Birech, Ruto & Co. Advocates which firm had erstwhile been the one on record for the Petitioner. The matter then proceeded to trial.

Objector's Case

12. The Objector testified on as PW1 on 31/01/2022 before Hon. Justice Ogola and was taken through her evidence by her Counsel, Mr. Momanyi. She testified that she was born in 1938 and then basically reiterated the matters already set out in her Objection, Affidavits, and Witness Statements. She reiterated that she was the only widow of the deceased and that the Petitioner is the wife of his brother-in-law, one James Bruce. She referred to one Charles Kipkemboi and stated that he is a son of her said brother-in-law, James Bruce. She insisted that the deceased was single when she got married to him and never in his lifetime, got married to anyone else. She denied that the deceased was the father of the said Charles Kipkemboi and added that when Charles Kipkemboi became an adult, there was an issue on where he should be settled and that there was no agreement between the deceased and the said James Bruce on where Charles Kipkemboi was to be built a home. She denied that Charles Kipkemboi was her step-son. She then reiterated that only her 6 children are beneficiaries of the estate. She also testified that when the initial Petition was filed at Kapsabet, the Petitioner named her (Objector) as one of the Petitioners without her request. She also stated that she did not sign the Petition.
13. Under cross-examination by the Petitioner's Counsel, Mr. Sambu, she reiterated that she got married to the deceased in 1957 but could not recall who between her own 1st born child and the said Charles Kipkemboi was older. She stated that her marriage was a traditional wedding conducted in Kapsabet, that the deceased came from Chepsiria in Nandi, Aldai sub-County and that parents and uncles of the deceased attended, that she did not see James Bruce at the ceremony and that she does not know when the Petitioner and James Bruce got married but stated that it was soon after her own marriage to the deceased. She then testified that one Philemon Chepkoech Kemei was the wife to James Bruce but she is not alive, that after her death, James Bruce married the Petitioner although she could not recall the year of the marriage, and also married one Elizabeth Chebet Kemei after the death of Philomena Kemei.
14. Regarding her own marriage to the deceased, she testified that there was a koito (pre-wedding) ceremony held at Sangalo, that at that time, the deceased was working in a hospital, and that her dowry was paid by uncles to the deceased. She contended further that she lives on parcel number Nandi/Kiminda/308, denied that Charles Kipkemboi lives on the same land and stated that Charles



Kipkemboi lives on land owned by the son to Pius but which she then conceded is a portion of the same Nandi/Kiminda/308 and also conceded that he has been living on that portion of the land for a while and after she got married. She then challenged the correctness of the letter from the Chief which indicated that the deceased had 2 wives. She testified that when she got married, James Bruce was no longer in school and was already married to the said Philomena Chepkoech Kemei. She also stated that she sought to evict Charles Kipkemboi from the said land. Regarding the Petitioner's alleged act of using her name to file the Petition at Kapsabet, she claimed that she reported the matter to the police.

15. PW2 was one Vincent Kipkorir, who, too, testified before Hon. Justice Ogola on 13/06/2022. He adopted his Witness Statement and stated that he was 73 years old. In cross-examination, he stated that he was born in Sangalo location where he has lived all his life and that he knew the deceased. He stated that the deceased came to Sangalo in 1956 when he (PW2) was 8 years old and that the deceased was younger than him. He then testified that there was a marriage between the deceased and the Objector which ceremony was conducted in the house of PW2's brother but that he (PW2) was chased away because he was young. He stated that James Bruce Kemei was the brother to the deceased whom he knew in 1978 but that he did not know how many wives James Bruce Kemei had. In re-examination, he stated that the Petitioner and the said James Bruce Kemei were husband and wife.
16. PW3 was one John Kipchirchir Kosgei, who also testified before Hon. Justice Ogola on 27/06/2022 and adopted his Witness Statement. In cross-examination, he stated that he was born in 1976 and testified that the deceased was married to his aunt (Objector) although he conceded that he (PW3) was not born at that time and also that he did not know the date of the marriage. He stated that he knew Charles Kemei whom he knows as the son of the Petitioner and who stays at Kapsabet in the farm of the deceased and which is where the Objector also stays.

Petitioner's Case

17. DW 1 was James Bruce Kemei who also testified before Hon. Justice Ogola on 27/06/2022. He stated that he lives in Chepsiria sub-location and then adopted his Witness Statement. He stated that the deceased is his older brother and got married in 1957 to the Petitioner and which marriage was conducted at Chepsiria sub location and that the couple had 5 children, and that after marriage, the couple lived at Kapsabet where the deceased worked in the Ministry of Health. He testified further that the Petitioner lives in Kapsabet, and that the deceased left the ancestral home to him (DW1) after the deceased got employment. As for the Objector, he stated that she lived with the deceased but no dowry was paid for her but that they recognise her because of the children. He then stated that one Charles Kemei is the Petitioner's 1st born and lives in Kapsabet with the Objector. He denied that the Petitioner is his (DW1) wife and stated that at the time of the Petitioner's marriage, he (DW1) was young and in class 4, that his (DW1) 1st wife is Philomena Chebet Kemei whom he married in 1966 but who passed away in 2003, and that thereafter, he married Elizabeth Jerubet Kemei. He testified further that the Petitioner has a home where they (DW1) live and that the farm where the Objector lives in at Kapsabet was bought by the deceased.
18. In cross-examination, he stated that he did not know whether the Petitioner has a house at Kiminda in Kapsabet, that they live together, that it is their ancestral home, that the Objector is a wife to the deceased with whom she had children and that they only recognize the Objector because of the children. He stated that although the Petitioner lives in their ancestral land, she will have to leave the land and go to her place in Kapsabet. He denied that Charles is his son and pointed out that Charles was born in 1958 when DW1 was still a child. In re-examination, he denied that he had given Charles any land.



19. DW2 was the Petitioner, Christine Jeptiony who testified before me on 7/07/2023 after which she was stood own and then resumed on 31/10/2023. She stated that she lives in Kiminda, Kaptarguy and testified in the Nandi language which was then translated to English. She adopted her Affidavit filed herein. She testified that she got married to the deceased in 1956, that a koito (pre-wedding) ceremony was conducted in the same year and that the family of the deceased went to their home for a “show-up” (groom introduction) ceremony but that they did not conduct a wedding ceremony because before they could do so, she discovered that the deceased had another wife. She testified that the wedding that they intended to conduct was to be a Catholic church one but that because of the said discovery, they instead only conducted a traditional ceremony in the same year 1956, that after the ceremony, she moved in with the deceased at Kapsabet where they lived for about 5 years and got 3 children, that in total, they got 6 children but one died. She stated that the Objector lives in Kamartaguy and that previously, she lived in the same house at Kapsabet with her (Objector) and the deceased and that the Objector was living with them as her co-wife although she (Petitioner) never accepted her (Objector) as a wife. She stated that she (Petitioner) had another house in Aldai, her husband’s ancestral home, that James Bruce Kemei is her brother-in-law, not her husband, and that James Bruce Kemei’s wives were Philomena and Elizabeth. She prayed that land belonging to her husband be declared to be shared her between her and the Objector. She stated that she had earlier filed the Succession proceedings over the estate at Kapsabet and which was subsequently transferred to Eldoret.
20. In cross-examination, upon her National Identity Card being scrutinized, and which indicated that she was born in 1948, she conceded that it would mean that she was 8 years old in 1956 when she allegedly got married to the deceased. She however contended that those days, people never knew their true ages. She conceded that she had not called any of her paternal relatives to prove that she conducted a marriage with the deceased but insisted that the marriage ceremony was conducted at her step-mother’s home in Chepsinya, that in Nandi customs, a marriage ceremony takes place at the bride’s home, and that one ceremony was done at her home and another one at the home of the deceased. She however conceded that in her Affidavit, she never mentioned the ceremony at the home of the deceased. She then stated that she and the said James Bruce live separately but on the same parcel of land which is owned by James Bruce, who has given her a portion to live on, that the land is in Kiminda where she has always lived but conceded that she does not have a home there. She denied that James Bruce is her husband and stated that even in Nandi customs, a brother-in-law cannot marry his brother’s wife.
21. It was at this juncture that DW1 was stood down as the Court had to attend to other engagements.
22. When she returned on 7/07/2023, she listed the names of her 5 children and testified that they are now all adults and married but conceded that she had not produced their birth certificates. In regard to the marriage ceremony, she contended that the witnesses who attended the same were now dead. She then stated that some of her children were born in Chepsinya and others in Kapsabet, that some were born where James Bruce used to live in Chepsinya. She denied that she had ever owned any land with James Bruce James and stated that she currently lives in Kamartugoi on land which is in the name of the deceased and on which land, her children and the Objector’s have built houses, and that the Objector also lives there but in a separate house. She testified further that her house was constructed in 1958 after she was married in 1955, and that the deceased had no house in Chepsirya. In re-examination, she stated that the land at Chepsirya where her house was constructed was ancestral land.
23. DW2 was one Priscilla Terer who testified before me on the same 31/10/2023. She stated that she was the area Chief of Kiminda location, Kapsabet Division, Nandi Cntral sub-county, Nandi County and had come to testify pursuant to Witness Summons issued by this Court and to produce her letter dated 27/10/2023. She confirmed that in the letter, she had stated that the Petitioner and the Objector were both widows of the deceased, and testified that the deceased was a clinical officer at Kapsabet District



Hospital. She stated that she was a headteacher for 24 years in the area before becoming the area Chief in 2010 and that she therefore knew the deceased. In cross-examination, she stated that the deceased died in the 1980s but she could not recall the exact date, and that she did not attend any ceremonies. She recounted how after she was appointed the Chief, the Objector went to her office seeking a letter for purposes of a Succession case and testified that her predecessor told her that the deceased had 2 wives but that the Objector wanted her to omit the name of the 2nd wife, that upon conducting inquiries, she confirmed that indeed, the deceased had 2 wives. She stated that she did not know where the Petitioner lives but that the Objector lives in Kamatuguy on land owned by the deceased and lives there with the Petitioner's son, Charles.

Submissions

24. Upon close of the trial, the parties filed written Submissions. The Objector filed her Submissions on 22/07/2024 while the Petitioner had filed hers earlier on 7/02/2024.

Objectors' Submissions

25. In his Submissions, Counsel for the Objector submitted that it is not in contestation that the Objector was married to the deceased and were blessed with 6 children and that the only issue is whether the Petitioner was married to the deceased, whether the Petitioner had children with the deceased and whether the Petitioner's children are dependents and/or beneficiaries of the deceased. He pointed out that the Petitioner alleges that she got married to the deceased in 1957 under Nandi customary laws at Aldai within Nandi County and cited the case of *Hortensiah Wanjiku Yawe vs the Public Trustee, Court of Appeal Civil Appeal No. 13 of 1976* as authority for the principle that the onus of proving customary law marriage is generally on the party who claims it, that the standard of proof is on a balance of probabilities and that the formalities required for a customary marriage must be proved.
26. He also cited the book by Cotran "Restatement of African Customary Law" in which the essentials of a valid marriage under Nandi customary law were listed as capacity, consent, performance of the ratet ceremony, payment of kanyiok (bride price) and commencement of cohabitation and submitted that it was incumbent upon the Petitioner to prove all these essentials. Counsel contended that the Petitioner merely stated that she and the deceased conducted a pre-wedding ceremony at her parent's home and that the traditional ceremony took place in 1956 but that no proof that there was consent by the parties and also by their respective families was tendered in evidence. He contended that the Petitioner did not establish whether any bride price negotiations ever took place and/or that the Nandi customary rites or rituals or formalities were performed.
27. He also argued that the Petitioner did not state how much dowry was paid and the persons in whose presence it was paid, that although the Petitioner attempted to claim that she stayed together with the Objector as co-wives in the same house at the home of the deceased in Kiminda location, DW3, the area Chief contradicted this assertion by confirming that the only person she knew that lived with the deceased was the Objector. According to Counsel therefore, the Petitioner failed to prove that there was cohabitation. He also averred that there was nothing tendered in evidence to prove that the Petitioner's children were sired by the deceased, and that no birth certificates were tendered. Regarding the dependents and/or beneficiaries of the deceased, Counsel cited the definition stated in Section 29 of the *Law of Succession Act* and also cited the case of *Beatrice Ciamutua Rugamba v Fredrick Nkari Mutegi & Others, Chuka Succession Cause No. 12 of 2016* and submitted that the Petitioner did not provide any evidence of how the deceased maintained her children or that the deceased took up any parental responsibilities.



Petitioner's Submissions

28. On his part, Counsel for the Petitioner pointed out that according to the Ruling delivered herein on 29/01/2003, by Hon. Justice Etyang, other Succession matters related to the estate of the deceased herein were withdrawn and the issues concerning the estate were transmitted to the present Cause for determination. Counsel then submitted that the witnesses called by the Objector did not have any direct evidence on the question of marriage between the deceased and the Petitioner. Counsel then recounted the testimonies of the witnesses and submitted that the question as to whether one is married to a person is a question of fact to be resolved by way of evidence, that in this case, the evidence adduced points to the fact that the Petitioner and the Objector were married by the deceased under the Nandi customary law in 1956 or thereabouts, that she was the 1st wife and were blessed with 5 children and that the deceased married the Objector as the 2nd wife.

Determination

29. The issues for determination in this matter are evidently the following:
- i. Whether the Petitioner was a co-wife to the Objector and thus, whether herself and her children are beneficiaries of the estate of the deceased.
 - ii. Who should be appointed the Administrator of the estate?
30. Section 66 of the [Law of Succession Act](#) sets out the order of preference to be followed in determining Petitions for grant of representation. The section provides as follows:
- “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;
31. Under Section 66 therefore, this Court has final discretion as to whom a grant of letters of administration shall, in the best interests of all concerned, be made. The order of preference set out in the law is therefore just a guide as the Court has the final discretion as to whom a Grant shall be made.
32. The question in this case is whether the Petitioner and the Objector are both wives and therefore widows of the deceased. Both the Petitioner and the Objector allege to have been married to the deceased around the same time, 1955-1957 or thereabouts under Nandi customarily laws. As aforesaid, both women are now quite old, they are both in their 80s, if not 90s, in age. The Objector alleges to have had 6 children with the deceased while the Petitioner alleged to have had 5. While the Petitioner has no problem with accepting and acknowledging that the Objector is indeed, her co-wife and thus a beneficiary together with her children, the Objector will hear none of it and vehemently denies that the Petitioner is her co-wife. According to the Objector, the Petitioner is in fact, a wife to the younger brother of the deceased (DW1) and that it is that brother who sired the Petitioner’s children.



33. As earlier stated, because of the tug-of-war cited above, my careful perusal of the record indicates that to date, 23 years since this Succession Cause begun in 2001, after the Grant initially issued in Eldoret High Court Succession Cause No. 32 of 1997 was revoked, no fresh Grant of Letters of Administration has ever been issued over the estate. The estate has therefore technically remained unadministered since the deceased died in the year 1993, 31 years ago.
34. The area Chief testified in this matter as DW3 and produced her letter dated 26/03/2019. In her said letter, the Chief stated as follows:
- “Ref: The Estate of Stephen Asiss (Deceased)
- The abovenamed person lived in Kamatergui village, Meswo sub-location, Kimindi location in Nandi Central sub-county before his demise.
- He left behind two widows, Christina Jeptiony Kemei and Monica Kemei and several children. The widows and the children should share equally between the two families all the deceased’s estate.”
35. Applying the principles set out in the authorities and statutory provisions cited above, to the facts this case, I note that in her testimony, the Chief (DW3) stated that the Objector approached her with a request for issuance of a letter identifying the survivors of the deceased for purposes of filing a Succession Cause and that the Objector wanted her to omit the Petitioner’s name as a co-wife. The Chief testified further that upon carrying out her inquiries, she established that indeed the deceased had 2 wives, the Petitioner and the Objector, and that this is how and why in her letter, she included both the Petitioner and the Objector as co-wives and widows.
36. DW2, the younger brother of the deceased, also testified that their family recognized both the Petitioner and the Objector as his late brother’s wives and also recognized all their children as belonging to the deceased.
37. The other fact that has caught my attention is that it has not been denied, as alleged by the Petitioner, that she (Petitioner) and her children have always lived on a piece of land owned by the deceased in his ancestral home and which is still where they live to date.
38. From the above testimonies, I am satisfied that the Petitioner and the Objector were co-wives of the deceased. The only member of the family of the deceased called as witness was DW2, the deceased’s younger brother, who confirmed that indeed, the Petitioner, just like the Objector, was a wife of the deceased and tat therefore the deceased had 2 wives. I fail to understand why the Objector, after knowing of the Petitioner’s status since the mid-1950s would still purport to disown the Petitioner to date. The two have clearly known of each other’s existence for almost 70 years now and there is no allegation that the deceased, during his lifetime, disowned either of them. Both have children with the deceased who are now old enough and with their own families. The Petitioner has also not alleged that the deceased, during his lifetime, disowned any of the Petitioner’s children. As aforesaid, it has also not been denied that the Petitioner and her children have always lived on a piece of land owned by the deceased in his ancestral home and which is still where they live to date. This, if true, also adds strong credence to the conclusion that the deceased had always accepted and treated the Petitioner as his legal wife.
39. The Objector has alleged that the Petitioner did not prove her claim that she was married traditionally under the Nandi customs. I agree that the Petitioner may not have sufficiently demonstrated that the relevant rites and ceremonies under Nandi customary law were conducted but I also accept her explanation that most of the people who attended the ceremonies are no longer alive. This I accept



since, as aforesaid, it is now almost 70 years since then. It would be impractical and absurd to demand that the people who attended the ceremonies, if any, be brought to Court to testify after such a long period of time. This Court cannot purport to stay aloof and feign ignorance of clear realities on the ground. 70 years is a very long time to insist on producing eye-witnesses. I believe this also explains why the Objector, too, on her part, was unable to find any witness who was alive around the time of the alleged marriage and who could then have come to Court to disprove or controvert the Petitioner's claim that the alleged rites and ceremonies took place. Although, granted, the burden of proof may not necessarily have been on the shoulders of the Objector on this issue, her inability to also bring any witness who was "around" at the material time in the 1950s vindicates the Petitioner. Since she is the Objector and thus the one challenging the Petitioner's claim of being a wife, she, too, ought to have brought evidence to prove her challenge. There being no evidence that the deceased, during his lifetime, disowned the Petitioner as his wife and/or her 5 children as his own, and considering that by the time that he died in 1993, he had been with the Petitioner for 33 years, I have no grounds to controvert the claim that the Petitioner was indeed, a co-wife to the Objector.

40. Although PW2, who claimed to have always been a resident of the area supported the claim that the Petitioner was a wife to DW2, and not the deceased, I am persuaded more by the evidence of the only member of the family of the deceased called as a witness, the younger brother (DW2), whose evidence was bolstered by that of the area Chief (DW3). No other member of the deceased's family having been called as a witness, I find no reason to disbelieve DW2 whose evidence was, in any event, case corroborated by the evidence of the Chief (DW3). Having observed the Petitioner during her testimony, I also found her to be quite consistent and she appeared truthful and honest. Accordingly, I chose to believe her.

Final Orders

41. In the end, the I rule and order as follows:
- i. I make a declaration that the Petitioner, Christine Jeptiony Kemei, was a wife to the deceased, Stephen Kemei Assis, and was therefore a co-wife to the Objector, Monica Kemei. The Petitioner and the Objector are therefore declared to be the two widows of the deceased.
 - i. I make a further declaration that the two houses (the Petitioner's and the Objector's, respectively) are equally entitled to apply for the Grant of Letters of Administration Intestate over the estate of the deceased.
 - iii. The Court shall consequently appoint two joint Administrators and for purposes thereof, each of the two houses shall, within a period of twenty-one (21) days from the date hereof, nominate one person to be appointed a co-Administrator.
 - iv. Once the issue of appointment of the 2 co-Administrators is concluded, directions shall be given on determination of the distribution of the estate.
 - v. Costs shall be in the Cause.

DELIVERED, DATED AND SIGNED AT ELDORET THIS 29TH DAY OF NOVEMBER 2024

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WANANDA J.R. ANURO

JUDGE

Delivered in the presence of:



Kinyanjui h/b for Momanyi for Objector

Sambu for Petitioner

Court Assistant: Brian Kimathi

