

KENYA / JUDGMENT

In re Estate of Leparleen (Deceased) [2026] KEHC 12850 (KLR)

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COURT

High Court

BEFORE

JK Sergon

CASE / FILE NUMBER

Succession Cause E059 of 2021

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(13 August 2026) (Judgment)

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[2026] KEHC 12850 (KLR)

Republic of Kenya

In the High Court at Nakuru

Succession Cause E059 of 2021

JK Sergon, J

August 13, 2026

IN THE MATTER OF THE ESTATE OF PATRICK KITAMONGE LEPARLEEN (DECEASED)

Between

Mary Ntunkensian Leparleen

Applicant

and

Cindy Samaitan Leparleen

1st Respondent

Alice Cherono Leparleen

2nd Respondent

Ambassador John Lepi Lanyasunya

3rd Respondent

Judgment

1.This Judgment determines the Summons for Revocation of Grant dated 17th January 2024, filed by Mary Ntunkensian Leparleen ("the Applicant"). The Applicant seeks the revocation of the Grant of Letters of Administration issued to the Respondents and confirmed on 14th February 2023, on grounds that it was obtained fraudulently and through concealment of material facts.

2.The Applicant contends that she is the lawful first wife of the deceased, Patrick Kitamonge Leparleen, and that the Respondents deliberately excluded her and her two children, Michael Saitoti and Zeinabu Daniella Leparleen, from the succession proceedings. The Respondents oppose the application, arguing that the Applicant ceased to be a wife of the deceased following a divorce in 1982 and subsequently remarried under Islamic law.

3.The gravamen of this dispute lies in the competing narratives surrounding the marital status of the Applicant at the time of the deceased's death. Was she a lawful wife entitled to inherit, or had her marriage been dissolved decades earlier? This is the central question that this court must resolve.

4.The deceased, Patrick Kitamonge Leparleen, died intestate on 2nd September 2020. The Respondents obtained a Grant of Letters of Administration which was confirmed on 14th February 2023, distributing the estate.

5.The Applicant filed the instant application on 17th January 2024, seeking revocation of the grant. The matter proceeded to full hearing with both parties calling witnesses and tendering evidence.

6.The procedural history of this matter reveals that the Applicant was not a party to the initial succession proceedings. The grant was obtained and confirmed in her absence, a fact that forms the foundation of her application.

7.The Applicant's case rests on the following pillars. She was lawfully married to the deceased under both Samburu customary law and the African Christian Marriage and Divorce Act, as evidenced by a marriage certificate dated 25th December 1968 (MNL-1). Their marriage was blessed with five issues: Rose (deceased), Monica, Esther (deceased), Michael Saitoti, and Zeinabu Daniella. She separated from the deceased in 1992 but was never divorced. She has never remarried and Mohammed Boi Leparmarai is merely a family friend. The Samburu Council of Elders (AJS) found her to be a dependent and beneficiary of the estate. The Chief of Maralal Location confirmed her status as the 1st wife of the deceased.

8.The Applicant called three witnesses. She testified as PW1, while Christopher Lelkalepi of the AJS Council testified as PW2, and Moses Lenairoshi, who was the best man at her church wedding, testified as PW3.

9.The Respondents' case rests on the following pillars. The Applicant and the deceased divorced in 1982 under Samburu customary rites. Following the divorce, the Applicant married Mohammed Boi Leparmarai under Islamic law at the Maralal Mosque. The Applicant and Mohammed Boi had two children: Michael Saitoti and Zeinabu Daniella. Monica Ntoroisian Leparleen is the only child of the marriage between the Applicant and the deceased. Rose and Esther were children from other relationships. The Applicant's birth certificates for Michael and Zainabu were fraudulently obtained 19-20 years after their birth. The estate was properly distributed, with the Applicant's "house" represented by Monica.

10.The Respondents called five witnesses. Monica Ntoroisian Leparleen, the Applicant's daughter, testified as RW1. Timothy Lemargeroi, the best man at the traditional wedding, testified as RW2. Petro Lolukayi, a nephew of Mohammed Boi, testified as RW3. Wilfred Martin, an elder of the Maralal Mosque, testified as RW4. Abdillahi Mohammed, also a resident of Maralal, testified as RW5.

11.The Applicant filed written submissions dated 13th November 2025.Counsel for the applicant argued that she was lawfully married to the deceased in accordance with the Marriage Act, Cap 150 as evidenced by a valid marriage certificate. Counsel contended that no divorce certificate or court order had been produced by the Respondents to prove dissolution of the marriage. Counsel further argued that the Respondents obtained the grant fraudulently by concealing the applicant's status as the lawful first wife. Counsel submitted that Ambassador John Lepi Lanyasunya, being a friend and not a dependent, lacks locus standi to administer the estate. She relied on *Evans Nyakwana v Cleophas Bwana Ongaro* [2015] eKLR for the proposition that the burden of proof lies on the party asserting the affirmative of the issue. The applicant prays for an order revoking the current grant issued on 16th February 2023 and requests that a fresh grant be issued to her as the first administrator.

12.The Respondents filed written submissions dated 27th November 2025.Counsel for the respondents argued that the Applicant's credibility was fatally impeached by material inconsistencies in her testimony, particularly regarding the year of separation. They submitted that the Applicant had separated from the deceased for 38 years and had remarried Mohammed Boi under Islamic law. They contended that the marriage was dissolved under Samburu customary law and that the absence of a formal divorce decree was not fatal to their case. They argued that Michael and Zainabu were not children of the deceased but of Mohammed Boi. They relied on *Kimweli v Kimweli* [2022] KECA 1394 (KLR) on credibility assessment and *Evans Kidero v Speaker of Nairobi City County Assembly & another* [2015] eKLR on the standard of proof for fraud. Finally, Counsel submits that the claim that the grant was procured by concealment of material facts lacks sound legal basis and it ought to be dismissed with costs.

13.I have considered the evidence in totality, the written submissions by both parties and the authorities cited and the applicable law.

14. The following issues arise for determination; i. Whether the Applicant was lawfully married to the deceased at the time of his death. ii. Whether the marriage was dissolved through divorce. iii. Whether the Applicant remarried Mohammed Boi Leparmarai. iv. Whether Michael Saitoti and Zeinabu Daniella are dependants of the deceased. v. Whether the Respondents obtained the grant through fraud or concealment of material facts. vi. Whether the grant should be revoked.

15. It is trite law that he who alleges must prove. The legal burden of proof rests upon the party who invokes the aid of the law and substantially asserts the affirmative of the issue. This is the purport of Section 107(1) of the Evidence Act, Cap 80 Laws of Kenya. In *Mbuthia Macharia v Annah Mutua & Another* [2017] eKLR, the court of appeal held: "The legal burden is discharged by way of evidence, with the opposing party having a corresponding duty of adducing evidence in rebuttal. This constitutes evidential burden. Therefore, while both the legal and evidential burdens initially rested upon the appellant, the evidential burden may shift in the course of trial, depending on the evidence adduced. As the weight of the evidence given by either side during the trial varies, so will the evidential burden shift to the party who would fail without further evidence? In this case, the incidence of both the legal and evidential burden was with the appellant."

16. In the instant case, the Applicant bears the burden of proving that the grant was obtained fraudulently. Fraud must be distinctly alleged and proved. In *Evans Nyakwana v Cleophas Bwana Ongaro* [2015] eKLR, the court held: "...As a general proposition the legal burden of proof lies upon the party who invokes the aid of the law and substantially asserts the affirmative of the issue. That is the purport of Section 107 (i) of the Evidence Act, Chapter 80 Laws of Kenya. Furthermore, the evidential burden... is cast upon any party, the burden of proving any particular fact which he desires the court to believe in its existence."

17. Further, allegations of fraud must be pleaded and proved to a standard higher than the ordinary balance of probabilities. The assessment of credibility of witnesses is fundamental in a case such as this, where the evidence is largely oral. In *Stellenbosch Farmers Winery Group Ltd & Another v Martell & Others*, 2003 (1) SA 11 (SCA) at para 5, the South African Supreme Court of Appeal explained how a court should resolve factual disputes and ascertain as far as possible where the truth lies between conflicting factual assertions. It stated; "To come to a conclusion on the disputed set of facts, a court must make findings on: i. The credibility of various factual witnesses; ii. Their reliability; and iii. The probability or improbability of each party's version on each of the disputed issues. In light of the assessment of (a), (b) and (c), the court will then, as a final step, determine whether the party burdened with the onus of proof has succeeded in discharging it. The hard case, which will doubtless be a rare one, occurs when a court's credibility findings compel it in one direction and its evaluation of the general probabilities in another. The more convincing the former, the lessor convincing will be the latter. But when all factors equipoised, probabilities prevail. "

18. I have carefully considered the testimony of all witnesses. The Applicant's testimony was fraught with material inconsistencies. In her supporting affidavit sworn on 17th January 2024, she stated that the separation occurred "sometime in the year 1992." In her further affidavit sworn

on 8th May 2024, she stated: "In 1982, my late husband and I separated as he was moving to the United States of America." During cross-examination, she maintained both positions, oscillating between 1982 and 1992. This is not a minor discrepancy. The 10-year difference goes to the heart of the narrative. A person who cannot recall when a fundamental life event occurred cannot be said to be a credible witness.

19. Similarly, the Applicant's testimony on her residence was inconsistent. In one breath she stated she lived in the matrimonial home until the deceased's death; in another, she stated she lived with her children and not on his land. She claimed to have been living with the deceased in 2021, 1999 yet she also claimed they separated in 1982 or 1992. These contradictions cannot be reconciled.

20. In contrast, the Respondents' witnesses provided a coherent and consistent narrative. Monica Ntoroisian Leparleen, the Applicant's own daughter, testified with remarkable candor about her family history. She spoke of constant fights between her parents, the Applicant's threats against the family, and the Applicant's relationship with Mohammed Boi. Her testimony was not shaken during cross-examination.

21. Timothy Lemargeroi, who was the best man at the traditional wedding, provided a detailed account of the events leading to the separation. He testified that elders were convened in 1982 to hear the dispute, and the Applicant was returned to her parents' home. His testimony was corroborated by other witnesses.

22. The mosque elders, Wilfred Marti and Abdillahi Mohammed, testified that the Applicant was married to Mohammed Boi under Islamic law. While they did not produce a marriage certificate, their evidence was consistent and credible. The testimony of the Applicant's own daughter carries particular weight. It is not common for a child to testify against her mother, especially in a matter concerning inheritance. Monica had no apparent reason to fabricate evidence against her mother. Her testimony appeared to be a genuine attempt to set the record straight.

23. The Applicant produced a marriage certificate (MNL-1) demonstrating that she and the deceased solemnized their marriage on 25th December 1968 under the African Christian Marriage and Divorce Act. This is prima facie evidence of a valid marriage.

24. Section 76 of the Law of Succession Act provides that a grant may be revoked if obtained by concealment of material facts. The key question is whether the Applicant's status as a wife was a material fact that should have been disclosed. However, the Respondents presented evidence of divorce under Samburu customary law. Timothy Lemargeroi testified that elders convened a meeting in 1982 to separate the couple. He stated that upon his return from the United States of America in 1982, the deceased learned about the applicant's promiscuity and decided to separate with her. He called Timothy and other elders to convene a meeting for that purpose. The meeting was convened and after deliberations, they returned the applicant to her parent's home.

25. Monica testified that the marriage was dissolved and that the Applicant was given property at Lodung'okwe as part of the settlement. She stated that when the marriage dissolved, her mother was given land, a house, rental apartments and Ksh. 50,000/=.

26. The Applicant denied that any divorce occurred. However, she admitted that she separated from the deceased, that she lived at Lodung'okwe with her children, and that she received rent from property given to her by the deceased. These facts are consistent with a divorce settlement. Under Samburu customary law, divorce proceedings are conducted by elders. The absence of a formal court decree does not mean that a divorce did not occur. Customary marriage and divorce are recognized under Article 11 of the Constitution and the Marriage Act, 2014. The court must give effect to customary law where it is not repugnant to justice and morality.

27. The evidence before this court overwhelmingly supports a finding that the marriage was dissolved under Samburu customary law in 1982. The Applicant's separation from the deceased for 38 years, the settlement she received, and her subsequent relationship with Mohammed Boi all point to a dissolution of the marriage.

28. The Respondents presented compelling evidence that the Applicant married Mohammed Boi under Islamic law. Multiple witnesses testified to this fact. Monica testified that the Applicant lived with Mohammed Boi at Lodung'okwe and had children with him. She stated that she lived with Muhamed Boi, that he was a man, that she was pregnant with the son, that she was abused by her mother, that Muhammed was Muslim, and that her mother had children with this man.

29. Petro Lolukayi, a nephew of Mohammed Boi, testified that the Applicant was his uncle's wife and that they had two children, Michael and Zeinabu and that since Muhammed loved Mary he married her as a Muslim.

30. Wilfred Martin, an elder of the Maralal Mosque, testified that he knew the Applicant as the wife of Mohammed Boi since 1980/1981. Abdillahi Mohammed testified that he used to see the Applicant and Mohammed Boi in the Mosque and that in Islam, one is not allowed to live with a woman without marriage. The Applicant denied being married to Mohammed Boi. However, she admitted knowing him and admitted that her daughter Zeinabu has a Muslim name. She further admitted that she is a Muslim.

31. I am satisfied that the Applicant married Mohammed Boi under Islamic law after her marriage to the deceased was dissolved. This finding is supported by the testimony of multiple credible witnesses, the Applicant's admission of a close relationship with Mohammed Boi, the fact that the Applicant is a Muslim, and the birth of Michael and Zeinabu during the period of cohabitation with Mohammed Boi.

32. The Applicant claims that Michael Saitoti and Zeinabu Daniella are children of the deceased. She produced birth certificates (MNL-2) to support this claim. However, the Respondents presented evidence that these children were born during the period the Applicant lived with Mohammed Boi. Monica testified that the applicant gave birth to Michael Saitoti and Zeinabu Daniella Leparleen when they were living at Lodung'okwe with Mohammed Boi Leparmarai. She

stated that it is highly dishonest for the applicant to swear an affidavit and state that the two children are the children of her late father.

33.The birth certificates produced by the Applicant raise serious questions. Zeinabu Daniella was born on 10th May 1982, but her birth certificate was issued on 18th September 2001, approximately 19 years after birth. Michael Saitoti's birth certificate was issued approximately 20 years after his birth. The delayed registration of births is suspicious. Delayed registration of births may indicate that the registration was done for a purpose other than the legitimate recording of birth.

34.The Applicant did not call Michael or Zeinabu as witnesses. She did not provide DNA evidence or apply for it to establish paternity. The court cannot rely solely on birth certificates that were obtained decades after birth, especially in the face of compelling contrary evidence. I find, on a balance of probabilities, that Michael Saitoti and Zeinabu Daniella are not children of the deceased. They are the children of the Applicant and Mohammed Boi Leparmarai.

35.The Applicant relied on two documents: a letter from the Senior Assistant Chief, Maralal Sub-Location, confirming her as the 1st wife of the deceased; and a letter from the Samburu Council of Elders Association (AJS) recommending that she be considered in the distribution. The Chief's letter, while on official letterhead, is a certificate of residence and family composition, not a judicial determination of marital status. The Chief would have been expected to have knowledge of the families in his area, but his letter does not address the divorce or the Applicant's remarriage. The AJS proceedings were conducted in 2023, long after the divorce and remarriage occurred. The AJS is not a court of law and lacks jurisdiction to annul grants or distribute estates. Its findings are advisory, not binding. Moreover, the credibility of the AJS proceedings was undermined during cross-examination when Moses Lenairoshi denied attending the meeting, and Christopher Lelkalepi admitted he did not record the minutes.

36.The duty of a Succession Court is principally to protect estates of deceased persons which it has jurisdiction over and to oversee the transmission of those estates to the lawful beneficiaries. The duty of the Court to deal with any dispute arising out of that mandate cannot be gainsaid. The AJS proceedings cannot supplant the role of this court in determining succession matters. This court is entitled to make its own findings based on the evidence presented.

37.The deceased was a polygamous man. Section 40 of the Law of Succession Act provides that the net intestate estate shall be divided among the houses according to the number of children in each house, adding any surviving wife as an additional unit. The confirmed grant distributed the estate to the various houses. The Applicant's "house" was represented by her daughter Monica Ntoroisian Leparleen. Since the Applicant is not a surviving widow, she is not entitled to a share of the estate.

38. In *Re Estate of the Late Harrison Gachoki alias Rukwaro Gachoki* (Succession Cause No. 53 of 1998), 2005 KEHC 1613 (KLR) the court held: "Although the petitioners maintained that they were still 'wives' of the deceased as their marriage had not been dissolved, a separation of 30 years is surely a long time. Having deserted the matrimonial home for such a long period and having failed to provide the corresponding conjugal rights to the deceased, the deceased cannot be blamed for having intentionally left them out of the distribution."

39. This court adopts the reasoning in the above case. Even if the Applicant was not formally divorced, the 38-year separation, coupled with her remarriage to another man, is sufficient to disentitle her to a share of the estate. She effectively abandoned the marriage and cannot now claim to be a surviving widow.

40. The Applicant alleges that the Respondents fraudulently obtained the grant by failing to disclose her status as the lawful wife. However, if the marriage was dissolved and the Applicant remarried, she was not a beneficiary at the time of the deceased's death. In *David Wachira Kinuu v Betty Wambui Githu; Kiambu District Land Registrar (Interested Party)* [2019] eKLR, the court observed: "Fraud consists of some deceitful practice or wilful device, resorted to with intent to deprive another of his right, or in some manner to cause him an injury."

41. There is no evidence that the Respondents acted with fraudulent intent. They obtained the grant in good faith, believing that the Applicant was no longer the deceased's wife. The concealment of the Applicant's status, if any, was not fraudulent because the Respondents genuinely believed she was not a beneficiary. The Applicant has not proved fraud distinctly. She has failed to discharge the burden of proof.

42. It must be noted that the Respondents did not produce a formal divorce decree or a court order dissolving the marriage. However, the absence of such a decree is not fatal to the Respondents' case. Under Kenyan law, customary marriages may be dissolved in accordance with the customs of the community. The evidence of the elders' meeting in 1982, which was convened specifically to separate the couple, is sufficient proof of dissolution under Samburu customary law. Furthermore, the Applicant's subsequent marriage to Mohammed Boi under Islamic law is itself evidence that the previous marriage was dissolved.

43. Section 76 of the Law of Succession Act provides: "A grant of representation, whether or not confirmed, may be revoked or annulled if the court decides, either on application by any interested party or of its own motion—(a) that the proceedings to obtain the grant were defective in substance; (b) that the grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case; (c) that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently."

44. For the Applicant to succeed, she must prove that the Respondents concealed her status as a lawful wife. However, as I have found that the marriage had been dissolved and the Applicant had remarried, she was not a lawful wife at the time of the deceased's death. Therefore, there was no material fact to conceal. The grant was properly obtained and confirmed.

45. Consequently, the Summons for Revocation of Grant dated 17th January 2024 lacks merit and is hereby dismissed. Each party shall bear its own costs.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 13TH DAY OF AUGUST, 2026. J. K. SERGONJUDGE
In the presence of: Rutoh C/A Okumu for the Applicant/Objector (Applicant in person)
Alwala holding brief for Githui for Administrator

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