



PRESENTS

KARANJA NJENGA ADVOCATES

CULTURAL *Day*

Theme:
ONE FIRM MANY STORIES
JULY **3RD** 2026

Activities
POTLUCK | TRADITIONAL MUSIC AND DANCE
| GAMES | CULTURAL TRIVIA QUIZ
Dresscode
ANKARA

At Karanja Njenga Advocates, we recognize that our strength lies not only in legal excellence, but also in the diverse people who make our team.

This July, we celebrated our Cultural Day, a vibrant occasion where colleagues showcased their heritage through traditional attire, cuisine, music and shared experiences. The event reinforced our commitment to inclusion, mutual respect, and collaboration, values that continue to shape the way we serve our clients.



Nyama Choma, A true Kenyan favourite.

A Taste of Tradition; Food brought our cultures together, with colleagues sharing traditional dishes, flavours and culinary.



Muru wa Mumbi



A tradition of Leadership:
Our founding partner joins in the celebration reminding us that our diversity is our greatest strength.



Calabashes of fermented porridge; a familiar taste at the heart of communal gatherings and celebrations.



"Kwata Kaway!"



Two Cultures, One Grace:
Two Beautiful expressions of cultural identity, celebrating femininity, friendship and the elegance of cultural diversity.



A lively moment of storytelling and celebration.



One Team, Many Cultures



Mulembe, a spirit of joy and togetherness. Our isikuti dancers brought warmth and rich smiles



"Kilumi"



"Born of the Lake" but do we say!

The Flavours of the Lake a celebration of heritage and the bounty of our waters.



"Muuga"



Spotlighting The "Murima" crew



Sharing a moment over "Muratina", enjoyed from traditional drinking horns.



Threads of Heritage

DETERMINING THE LEGALITY OF INHERITANCE BY SPOUSES IN VOID MARRIAGES

INTRODUCTION

What happens when a man married in a monogamous system of marriage remarries? Contrasting views have been adopted over the years as a result of distinct provisions in the Law of Succession Act and the Marriage Act. Section 9 of the Marriage Act explicitly invalidates a married person in a monogamous marriage from contracting another marriage or a person married in a polygamous marriage from contracting a marriage in a monogamous system. However, **Section 3(5) of the Law of Succession Act** stipulates that where a woman married under a system of law which permits polygamy is where her husband has contracted a previous or subsequent monogamous marriage, nevertheless a wife for the purposes of succession.

The Law of Succession therefore creates an exception to the general rule of invalidity. Despite the clarity of the terms used debates have raged on for decades on the extent of application of Section 3(5) with each new decided case bringing a new perspective. The High Court in ***In re Estate of the Late Musyimi (Deceased)*** **[2026] KEHC 9445 (KLR)** has once again reignited this old age debate. This article therefore delves into an evolutionary analysis of Section 3(5) allowing the reader to appreciate how the landscape of succession and particularly the definition of who a wife is has changed and continues to change.

A Voyage through History.

Prior to 1981 when Section 3(5) was introduced into the Law of Succession Act the position in law was clear. Section 37 of the Marriage Act which invalidated second marriages for persons that contracted a monogamous marriage was given primacy in answering questions of validity of subsequent marriages for purposes of succession. This would be expressed in the case of ***Re Ruenji*** and ***Re Ogola*** where the invalidity of a marriage rendered a would-be spouse incapable of inheriting. A woman who married a man that had contracted a previous monogamous marriage and had not lawfully divorced was completely locked out by the law from recognition as a wife and consequently could not inherit.

Noting the injustice propagated by the provisions of the Marriage Act, Parliament would enact Section 3(5) of the Law of Succession Act. Yet this did not entirely resolve the issue. It would open up a tussle in the courts of public opinion. Debates on the extent of the amendment grew and soon enough the courts were caught up in the tussle and required to decide.

The very first instance when Section 3(5) would be considered by the court was ***In the Matter of the Estate of Reuben Nzioka Mutua*** where the Lady Justice Aluoch would hold that the amendment had been brought in to cater for women married under customary law who were either abandoned or neglected by their husbands during their lifetime.

The Learned judge gave an illustration that would later become a matter of great debate. She stated that if A marries B under customary law then subsequently marries another lady, C and the two-contract marriage under statute. Upon A's death and for purposes of succession B is considered a wife by the Act despite the fact that C is the one with a marriage certificate. In her assumption the learned judge assumed that statutory marriages were given precedence over customary marriages and concluded that Section 3(5) was brought in to rescue women married under customary law from being locked out of succession. Was the learned judge right in her position?

The Court of Appeal would reject this view in the case of ***Irene Njeri Macharia v Margaret Wairimu Njomo & another [1996] KECA 224 (KLR)*** Relying on the example that the judge had used they came to this conclusion. The court stated that A upon marrying B under customary law lost capacity to contract a statutory marriage. The only other marriage A could contract was a subsequent polygamous marriage. In the example given by the learned judge it is the marriage of A to C that was invalid. B would be entitled to the Estate of A not because of Section 3(5) but because she was the only lawful wife of A.

C on the other hand could not call into her aid Section 3(5) because the statute under which she contracted marriage with A was a **system of law which does not permit polygamy**. The Court of Appeal enunciated two key points that first, marriage contracted under any system cannot be overridden by a subsequent marriage and second, that for one to call **Section 3(5) to their aid they must have contracted the marriage in a system that permits polygamy**. This would be the prevailing view for decades.

The Courts would then extend the provisions of the amendment to apply to instances where a wife cohabited with the deceased buoyed by Article 27 of the Constitution of Kenya 2010. This was the position taken in ***Musela v Wambui & another & 3 others [2024] KECA 679 (KLR)*** stating that the circumstances that led to the enactment of Section 3(5) of the Law of Succession Act apply to women who find themselves in **"come we stay marriages."**

Finding to the contrary, the court remarked would be a smack of injustice and discrimination to the myriad of Kenyan women who find themselves in such situations. The promotion of justice and equality would once again prevail in furthering the boundaries of Section 3(5).

The voyage through history reveals that the courts have not for once looked back to the days when the Marriage Act was given precedence. They have continued expanding the provisions of Section 3(5) guided by the principles of equality, justice and fairness. Yet the recent case of **Succession Cause No. E600 of 2022 In the matter of the Estate of the Late Ndolo Kioko Musyimi** has brought with it new controversy in the tale of Section 3(5).

It is important to remember what the Court of Appeal stated in the ***Macharia vs Njomo*** case, C on the other hand could not call in her aid Section 3(5) because the statute under which she contracted marriage with A is a **system of law which does not permit polygamy**. For one to be shielded by the provisions of Section 3(5) they must have been married in a system of marriage that permits polygamy. What this means is that if one initially contracts a monogamous marriage then goes ahead to contract another monogamous marriage then the provisions of Section 3(5) should not be able to rescue them. They would not be recognized as a wife. Yet the case of ***Ndolo Musyimi*** has brought a new perspective to it as discussed hereunder.

The Heart of the Dispute

The dispute revolved around the administration of the Estate of the Late Ndolo Kioko Musyimi. The deceased died on 30th December 2021. Prior to his death he had married Loise Wambui Mungai under the tenets of the Marriage Act on 28th November 1987. He would marry Jane Jerry Kioko, the objector under the tenets of Hehe Customary Law on 14th March 2015 and later contracted a civil marriage in Tanzania on 27th June 2015 resulting in two issues who at the time of the cause were still minors. The deceased would divorce his first wife in January 2020 meaning that he contracted the second marriage while the first marriage still subsisted.

Recognition as a wife for purposes of succession

For about four decades now since the Court of Appeal in ***Macharia Vs Njomo*** made its finding it has been the position that Section 3(5) was restricted to women who got married in systems that permit polygamy. What this meant is that if the woman seeking to be recognized as a wife got into a monogamous marriage, they could not find shelter under Section 3(5).

I will illustrate this point if A marries B under a monogamous marriage the said marriage is of course valid. If A marries another lady C under traditional, customary or any other system that allows polygamy, C can enforce her rights to inherit pursuant to Section 3(5). However, if he marries C under the civil system or Christian systems of marriage basically systems that don't permit polygamy C cannot enforce her rights under Section 3(5). That is the position in law.

The case of Ndolo Musyimi has altered this view the court would hold that since the Act declared a customary marriage to be valid despite the existence of a monogamous marriage being in force, then by the same breath any second monogamous marriage like the case at hand will be deemed valid for the purposes of succession.

The learned judge is inferring that where A was married to B in a monogamous marriage then marries C under customary law C pursuant to Section 3(5) would be a wife for inheritance purposes why then should instances where he married C under a monogamous marriage be treated differently. The purpose of Section 3(5) the court concludes is to insulate women who find themselves in marriages that are not recognised in law from the injustice that would otherwise be occasioned.

The Takeaways

The High Court decision is instrumental as it made crucial findings that are consequential for any person involved as an administrator, beneficiary, executor or an objector to a grant of letters of administration cause and critically the settlor while planning their estate. This article therefore highlights the key findings of the high court and the impact they will have in estate planning.

The Court found that the provisions of Section 3(5) would still apply even in circumstances where the second marriage was not necessarily customary or polygamous in nature but monogamous. In the instant case the first and second marriages were monogamous. What are your thoughts on this? Should there be a limit on the application of Section 3(5)?

It crucially found that Section 3(5) insulates wives who find themselves in null and void marriages for purposes of succession. It is important to note however that beyond the declaration of being a wife there is still an entire process of distribution. Therefore, a declaration under Section 3(5) merely serves to grant one an opportunity to be heard in the succession proceedings and/or be a beneficiary entitled to a share of the Deceased's estate available for succession. It is not an automatic entitlement to proprietary rights in the Deceased's estate.

LEGISLATIVE & REGULATORY INSIGHTS

Owiso & 2 others v Attorney-General & another [2026] KEHC 12762 (KLR).

The Court declared that presidential elections ought to be held on the second Tuesday of August in the fifth year after the previous general election and not after the fifth year. What this means is that the elections ought to have been on held on Tuesday 11th August 2026. This is because the 2nd Tuesday of August in the fifth year falls on the 11th of August 2026. While the court has stayed the application of the judgement until the next election questions are bound to persist.

The questions include, whether a president is constitutionally guaranteed a 5-year term as was previously thought, whether the court can indirectly postpone an election as the judge effectively did by staying the application of the judgement for one year and whether the Electoral agency can hold elections at any time past the constitutional election date of **11th August 2026**.

Mandatory Inbound Travel Health Insurance Limits

In Special Gazette Notice issued on **29th July 2026** and subsequently published on **30th July 2026** all international visitors are required to have a medical policy cover of at least **USD 50,000**. The policy benefits will include **USD 20,000** to cover medical expenses, **USD 25,000** to cover emergency medical transportation, USD 300 for prescribed meds, **USD 1000** for mental illness and USD 5,000 for repatriation of mortal remains.

This move the Ministry has stated is meant to ensure that foreigners who enter the Republic of Kenya have access to medical health care while within the country. In instances where one is denied entry to Kenya after payment of the cover has been made the Ministry has insisted that the refunds should be made to such travelers. The cover must be taken by an insurance provider approved and licensed by the Insurance Regulatory Authority.



By:
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Legal Trainee

Did you know?

Duress in Making a Will 🖋️

Yes, the testator might be over 18 and of sound mind- all fine legally ✅

But if someone's *pressuring or threatening* them to write certain things, that's duress!

It means the will reflects the bully's wishes, not the testator's free will. Under Section 7 of the Law of Succession Act, that kind of will is invalid because even a calm mind can't act freely under fear.

Moral of the story: a trembling hand can't make a free will.

Legal
humor!

The Contract
A client asked his lawyer,
"Do I really need to read the entire contract?"
The lawyer replied,
"Only if you want to know what you're agreeing to".
The client nodded
"And if I don't read it?"
The lawyer smiled.
Then you'll find out later"



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