



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (MILIMANI LAW COURTS)**  
**SUCCESSION CAUSE NO. 636 OF 2000.**

**IN THE MATTER OF THE ESTATE OF DAVID NDUNGU GACHAU  
(DECEASED)**

**GRACE NYATHOGORA GACHAU.....APPLICANT**

**VERSUS**

**VERONICAH WANGARI NDUNGU**

**ESTHER KINAITORE M'IMPUI.....RESPONDENTS**

**RULING.**

The Summons herein is brought under sections 26 and 2a of the law of Succession by Grace Nyathogora Gachau. The applicant is the mother of the deceased person and she seeks for an order that

- Reasonable provision be made for her as a dependant of the Deceased as the court may deem fit.

The application is supported by an applicant sworn on 9/9/2003 and a supplementary one sworn on 5/12/2003. The applicant's contention is that the deceased was her first born son and prior to his death, the deceased fully supported and maintained her and she is therefore a dependant of the deceased within the meaning of section 29 of the laws of succession.

The deceased is also survived by the following: -

- a) Esther Kinaitore M'Impui -wife
- b) Linet Kanana –daughter (minor)
- c) Veronica Wangari Ndungu –wife
- d) Kennedy Wangombe –son (minor)
- e) Grace Warigia Ndungu –daughter

The application is opposed by the 1st Administrator, Veronica Wangari Ndungu. In her replying affidavit sworn on 5th November, 2003, she states that the Applicant has not made a full disclosure of all material facts, has the applicant is a woman of means. She owns a developed plot at Mweiga Town in Nyeri where she earns an income. She also owns a farm where she keeps a dairy cattle and grows subsistence crops for food and sale. The applicant is also supported by her other children who are grown ups and that the applicant could not have been supported by the deceased who was ailing for sometime prior to his death.

In the supplementary affidavit and during cross examination, the applicant conceded that there is a developed plot at Mweiga which belonged to her late husband and where she gets a share of the rental income of KShs. 5,000 per month.

She also admitted that she occupies a portion of her late husband parcel of land, she keeps cows and sells a little milk and grows food for consumption. She denied that she gets any form of assistance from the other children who although they are adults, they are not employed. She used to get support from the deceased even though he was sick for sometime.

I have considered the application, the supporting affidavit and the testimony of the applicant, which was subjected to cross-examination together with the replying affidavits by the 1st administrator carefully. It would appear that the 2nd administrator, one Esther Kinaitore M'Impui is not opposed to the applicant's application. In her application seeking for the confirmation of the grant, she proposes that the estate be shared equally between the 1st Administrator, herself and the applicant. She recognizes the applicant as the dependant of the deceased. I have no doubt that the applicant is a dependant within the meaning of section 29(b), which provides

“ Dependant's minors such as the deceased's parents, stepparents, grand parents, grand children, step children, children whom the deceased's had taken into his own, brothers and sisters as well being maintained by the deceased immediately prior to his death”

In considering the dependency of the applicant, one has to consider the circumstances provided for under section of the law of succession, the nature and amount of the deceased's property. In this case, the deceased estate is estimated to be Kshs. 500,000/= being the death gratuity from the office of the President where he was working and Harambee Co-op. Shares. The deceased other dependants are the two widows and three minor children. Prior to the deceased death, he was ailing and it is stated that the applicant together with the second wife were looking after him. It would appear that the applicant was naturally close to the deceased being her first born son and considering what she told the court that she used to support the second wife when the deceased was ailing by selling whatever she had even it was a cow or a goat to meet the deceased expenses.

In considering the sum to be provided to the applicant, this court is cognizant of the extensive needs of the deceased immediate family especially the minor children and the fact that the applicant is 69 years old, she has other children and she is not entirely helpless but just like Shylock, she is entitled to a pound of flesh from her son's estate. In this regard, I would provide the applicant with 10% of the net estate of the deceased.

Accordingly, the applicant to be provided with 10% of the net estate of the deceased upon confirmation of the grant. Parties are at liberty to apply for confirmation of the grant.

Orders accordingly.

Ruling read and signed on 23/1/2004.

**M. KOOME J.**

**23/1/2004**