



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re Estate of M'Ikiara M'Muthuri (Deceased) (Succession Cause 313 of 2003) [2025] KEHC 8373 (KLR) (16 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 8373 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
SUCCESSION CAUSE 313 OF 2003  
SM GITHINJI, J  
JUNE 16, 2025  
IN THE MATTER OF THE ESTATE OF M'IKIARA M'MUTHURI  
(DECEASED)**

**BETWEEN**

**ESTHER KANJA FRANCIS ..... PETITIONER**

**AND**

**LATIF IKIARA ..... 1<sup>ST</sup> OBJECTOR**

**RAEL KABIRI ..... 2<sup>ND</sup> OBJECTOR**

**RULING**

1. For determination are the Petition by way of cross application for a Grant and the Answer to Petition for a Grant dated 2/9/2009 by the Objectors in their capacities as a son and a wife to the deceased respectively. The Objectors have accused the Petitioner of omitting their names from the list of beneficiaries.
2. Directions were taken on 24/5/2016 that the objection be heard by way of viva voce evidence, when the parties and their witnesses testified. The 2<sup>nd</sup> Objector's case was closed without calling any witnesses.
3. Objector's Witness 1 Latif M'Ikiara and the 1<sup>st</sup> Objector herein adopted his statement filed on 31/10/2016 and produced his birth certificate to show that he was a son to the deceased. He testified that although he applied for his birth certificate on 22/6/1995, he obtained it after the demise of the deceased. He knew the Petitioner as a wife to the deceased, and his mother left when the deceased married another wife. The deceased had 4 wives and 9 children and his mother was the 1<sup>st</sup> wife while the Petitioner was the last wife. The deceased set up a business for him and he had evidence that the deceased gave him the plot at Gakoromone.



4. Objector's Witness 2 Gabriel Karani testified that the 1<sup>st</sup> Objector is a son to his cousin, the deceased herein. The deceased had 4 wives namely Asha, Rael, Hellen (deceased) and Esther, the Petitioner herein. The Petitioner lived at Gikumene while the 1<sup>st</sup> Objector resided on his own land.
5. Objector's Witness 3 Mary Nkatha Ikiara, a daughter to the deceased and the Petitioner herein acknowledged that the 1<sup>st</sup> Objector is her brother. She accused the Petitioner of taking all the properties belonging to the deceased at the expense of the other beneficiaries. She was young when the deceased introduced the 1<sup>st</sup> Objector to her, and the Petitioner promised to give them something if they denied knowing the 1<sup>st</sup> Objector.
6. Objector's Witness 4 Janet Kithira, a daughter to the deceased, testified that the Petitioner is her step mother and the 1<sup>st</sup> Objector is her brother. The 1<sup>st</sup> Objector was brought up by his mother but he used to visit his father, the deceased herein, who took him to school. The deceased told them that the 1<sup>st</sup> Objector was his son and they grew up knowing that fact. The 1<sup>st</sup> Objector was involved in the burial of the deceased but the Petitioner deliberately omitted his name from the eulogy. After the deceased died, the Petitioner chased them away so that she could solely benefit from the rental income from the business premises at Makutano.
7. Objector's Witness 5 Paulo Arimi, the deceased immediate neighbour, testified that the deceased had 4 wives and he knew some of his children like the 1<sup>st</sup> Objector, nicknamed Tifu and a few others. Latif was brought up by the deceased as his son, and after separating from his other wives, the deceased later married the Petitioner.
8. Petitioner's Witness 1 Esther Karanja Francis told the court that the deceased was her husband and they bought plot No. 9 at Makutano after marriage. The deceased was married to Joyce Mukiri (deceased) and they were blessed with 2 children namely Janet Kithira and Murangiri, who she brought up. She recognized Jenifer Makune, John Mwenda, Mary Nkatha, Patrick Kithinji, Janet Kithira and Murangiri as children of the deceased. She never saw the 2<sup>nd</sup> Objector at the home of the deceased and the deceased had told her that the 1<sup>st</sup> Objector was not his son. The 1<sup>st</sup> Objector's birth certificate was fake because it was obtained after the death of the deceased.
9. Petitioner's Witness 2 Samson Murithi testified that the deceased married the Petitioner in 1972 after his 1<sup>st</sup> wife, Murui passed on. The children of the 1<sup>st</sup> wife to the deceased were brought up by the Petitioner.
10. PW3 Gabriel Mwititi stated that the deceased had 4 children with the Petitioner and 2 children with Murui (deceased). He denied knowing the Objectors or any other wife of the deceased.

## **Disposition**

11. I have considered the application, the replying affidavit, the submissions by counsels and the authorities relied on.
12. The sole issue for determination is whether the Objectors have established their Objection to the required standard in law.
13. Section 68 of the *Law of Succession Act* provides that; "(1) Notice of any objection to an application for a grant of representation shall be lodged with the court, in such form as may be prescribed, within the period specified by such notice as aforesaid, or such longer period as the court may allow. (2) Where notice of objection has been lodged under sub-section (1), the court shall give notice to the objector to file an answer to the application and a cross- application within a specified period."



14. Section 69 of the *Law of Succession Act* provides that; “(2) Where an answer and a cross-application have been filed under subsection (2) of section 68, the court shall proceed to determine the dispute.”
15. The 1<sup>st</sup> Objector and his witnesses affirmed that the deceased had 4 wives. The 3<sup>rd</sup> and the 4<sup>th</sup> Objector’s witnesses, who are children to the deceased herein confirmed that the 1<sup>st</sup> Objector was indeed their brother from another mother. Their testimonies were corroborated by the 5<sup>th</sup> Objector’s witness who restated that the 1<sup>st</sup> Objector was a son to the deceased herein.
16. The Petitioner in her testimony vehemently denied knowing the Objectors as a son and a wife to the deceased respectively, and stated that the deceased had only 2 wives, herself and another one, who had since died.
17. I find that the overwhelming evidence led by the 1<sup>st</sup> Objector and his witnesses is proof on a balance of probabilities that the deceased was his father and the husband to the 2<sup>nd</sup> Objector.
18. The upshot from the foregoing analysis is that the Petition by way of cross application for a Grant and the Answer to Petition for a Grant dated 2/9/2009 are merited.
19. In order to safeguard the competing interests of the parties herein, I direct that a petition for letters of administration be jointly filed by the Petitioner and the 1<sup>st</sup> Objector, within 30 days from the date herein; which should involve all the beneficiaries, and in the event of default, either party be at liberty to so petition.

Mention on 31/07/2025

**DATED AND DELIVERED AT MERU THIS 16<sup>TH</sup> JUNE, 2025**

**S.M. GITHINJI**

**JUDGE**

Appearances:-

Mr. Kariuki for the Petitioner.

Mr. Karanja for the 1<sup>st</sup> Objector.

Miss Maina holding brief Mrs. Ntarangwi for the 2<sup>nd</sup> Objector.

