



**Rioki v Cephas (Family Appeal E002 of 2025)
[2025] KEHC 13335 (KLR) (25 September 2025) (Judgment)**

Neutral citation: [2025] KEHC 13335 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAMIRA
FAMILY APPEAL E002 OF 2025
WA OKWANY, J
SEPTEMBER 25, 2025**

BETWEEN

CAROLINE NYAKERARIO RIOKI APPELLANT

AND

BENJAMIN ABINJA CEPHAS RESPONDENT

*(Being an Appeal against the Ruling delivered in the Chief Magistrate's
Court at Nyamira in CMC Succession No. E014 of 2024 by Hon.
C.I. Agutu, Senior Resident Magistrate on 12th March 2025)*

JUDGMENT

Background

1. The Respondent filed a Petition dated 13th March 2024 before the trial court seeking grant of letters of administration ad litem.
2. The Appellant opposed the Petition through an Objection dated 19th March 2024 wherein he asserted that the Respondent was neither a beneficiary nor a dependant of the deceased. She claimed that she was the only widow of the deceased and insisted that the Respondent had imposed himself as the deceased's only son through the support of his paternal relatives who despised her for bearing daughters. The Appellant relied on the affidavit of her daughter, Brigitte Kepha, who averred that the Respondent was not a child of the deceased.
3. In a rejoinder, the Respondent swore an affidavit dated 3rd April 2024 wherein he stated that: -
 - a. He is the biological son of the deceased and the late Irene Moraa Mogeni, relying on a birth notification.
 - b. Even if not he is not a biological son, he was raised as the deceased's son on land parcel West Mugirango/Siamini/3481.



- c. The Appellant had deserted the matrimonial home in 1995 and only returned after the deceased's death.
 - d. The Appellant was married to one Michael Oyengo Ochwal as shown by an affidavit sworn in Nyamira ELC No. E007 of 2022, and that her daughters belonged to that marriage.
 - e. The Appellant acted with unclean hands by registering the deceased's property in her own name and charging it unlawfully to Mwananchi Credit Limited.
4. After considering the pleadings and the parties' written submissions, the trial court dismissed the Appellant's objection and found that the Respondent qualified as a dependant under Section 29 of the *Law of Succession Act* and was therefore entitled to the grant. Each party was ordered to bear their own costs.
 5. Aggrieved by the decision, the Appellant filed a Memorandum of Appeal dated 25th March 2025 challenging the Ruling of the Learned Trial Magistrate delivered on 12th March 2025, dismissing her Objection to the grant of letters of administration ad litem over the Estate of the late Cephas Kepha Onganga and appointing the Respondent as administrator.
 6. The Appellant raised six grounds broadly faulting the trial court for: failing to analyze her evidence, misapplying the principles under Section 66 of the *Law of Succession Act*, failing to give directions on viva voce evidence, wrongly finding the Respondent to be a dependant under Section 29, discriminating against her as a widow with female children, and relying on unproved documentary evidence such as a birth certificate and alleged customary marriage.

Issues for Determination

7. I have carefully considered the Record of Appeal and the parties' rival submissions. I find that the following issues arise for determination: -
 - i. Whether the trial court erred in its evaluation of the evidence.
 - ii. Whether the Respondent was entitled to apply for grant of letters of administration ad litem.
 - iii. Whether the Appellant's objection raised valid grounds under the *Law of Succession Act*.
 - iv. Whether the trial court discriminated against the Appellant as widow of the deceased.

Analysis

Duty of the first appellate court

8. As stated in Attorney General & 2 Others v. IPOA & 2 Others, CA No. 324 of 2014, this Court has the duty to re-evaluate the evidence and arrive at its own conclusions while bearing in mind that it did not see or hear the witnesses.

Entitlement to apply for grant – Section 66 of the *Law of Succession Act*

9. The Appellant's case was that Grant Ad Litem, over the Estate of the deceased, should not have been issued to the Respondent as he is not the deceased's son. Grant Ad Litem is provided for under Form



- 14 of the Fifth Schedule of the *Law of Succession Act* to primarily deal with institution of suits. The said provision states as follows: -
14. When it is necessary that the representation of a deceased person be made a party to a pending suit, and the executor or person entitled to administration is unable or unwilling to act, letters of administration may be granted to the nominee of a party in such suit, limited for the purpose of representing the deceased in the said suit, or in any other cause or suit which may be commenced in the same or in any other court between the parties, or any other parties, touching the matters at issue in the cause or suit, and until a final decree shall be made therein, and carried into complete execution.
10. The Respondent's case was that the Appellant was involved in acts that amounted to intermeddling with the Estate of the deceased which prompted him to apply for the said limited Grant. It is my finding that the Grant Ad Litem issued by the trial court was only limited to the filing a suit to preserve the Estate of the deceased and not to administer the said Estate. This means that any party who wishes to challenge the Respondent's relationship to the deceased or object to his involvement in the succession proceedings may still do so in the main/substantive Petition for grant of letters of administration. For that reason, the court will, at this stage, only concern itself with the issues relating to the limited Grant as the proceedings on the main Grant of Letters of Administration are yet to be initiated.
 11. On the issue of whether the Respondent had the locus standi to take out the said Grant Ad Litem, I note that the Appellant disputed paternity but did not apply to proceed through viva voce evidence or DNA testing. Courts have held that where paternity is in issue, documentary evidence such as a birth notification may suffice unless rebutted. (See *Re Estate of Solomon Ngatia Kariuki* [2008] eKLR).
 12. Section 3 of the *Law of Succession Act* (the Act) defines a child as follows: -
 - (2) References in this Act to "child" or "children" shall include a child conceived but not yet born (as long as that child is subsequently born alive) and, in relation to a female person, any child born to her out of wedlock, and, in relation to a male person, any child whom he has expressly recognized or in fact accepted as a child of his own or for whom he has voluntarily assumed permanent responsibility.
 13. Section 66 of the Act grants the court discretion in appointing administrators but accords priority as follows: -
 - a. Surviving spouse(s),
 - b. Children of the deceased,
 - c. Other relatives in order of proximity.
 14. I find that even though the Appellant herein ranked in priority as the widow of the deceased, there was the unanswered claim that she got married another man prior to the demise of the deceased. Be that as it may, under Section 29 of the Act, a "dependant" includes children of the deceased whether biological or accepted as such.
 15. In the present case, the Respondent produced a birth notification and chief's letter in support of his claim. He also filed affidavits sworn by Justus Onganga, the deceased's eldest brother, Mary Onganga, the deceased's mother and Samuel Magaki a church elder who averred that the deceased remarried the Respondent's deceased mother Irene Moraa Mogeni and were blessed with two children, the Respondent herein and another child who is deceased. The trial court accepted this evidence.



16. My finding is that the evidence presented by the Respondent, which evidence was not rebutted, established, on a balance of probabilities, that the Respondent is a son of the deceased.

Failure to hear viva voce evidence

17. The Appellant faulted the trial court for not directing the taking of oral evidence. My finding is that while oral evidence is desirable where facts are hotly contested, the record shows that the objection was canvassed by written submissions with the consent of parties. I find that the Appellant cannot now turn around and fault the trial court for adopting written submissions as the mode of canvassing the objection. I find guidance in the decision in *Mbogo vs. Shah* [1968] EA 93 where it was held that an appellate court should not interfere with the trial court's decisions unless it is shown that the trial court misdirected itself or acted on wrong principles.

Allegation of discrimination

18. The Appellant alleged bias on grounds that she was denied grant because she only gave birth to daughters. The record, however, does not show any discriminatory remarks by the trial court. I note that the court considered the Respondent's evidence of dependency and relationship to the deceased. I hasten to add that succession proceedings are governed by statutory criteria and not gender preference.

Evaluation of evidence

The Appellant also faulted the trial court for failing to properly evaluate the evidence presented by the parties. As I have already stated in this judgment, the Respondent provided letters from the Chief and District Officer and a birth notification linking him to the deceased. The Appellant, on the other hand, relied mainly on her own denial and affidavit of her daughter. I find that the trial court was entitled to find the Respondent's evidence more persuasive.

19. My above findings notwithstanding, I note that it is clear that the Appellant is the undisputed widow of the deceased, hence she ranks first in priority under Section 66. The trial court ought to have considered granting the letters jointly to both parties in order to balance competing claims and safeguard the estate. In *Re Estate of Wahome Njoki Wakagoto* [2013] eKLR, the court emphasized that where there is conflict, joint administration ensures fairness.

Conclusion

20. I find that the Respondent demonstrated sufficient connection to the deceased to be considered a dependant under Section 29, but the Appellant, being the widow, ranks in priority under Section 66. The trial court therefore erred in granting the letters solely to the Respondent.

Disposition

21. Accordingly, the appeal succeeds, albeit, partly . The orders of the trial court dated 12th March 2025 are hereby set aside and substituted as follows: -
- a. The Grant of Letters of Administration Ad Litem over the Estate of Cephas Kepha Onganga shall issue jointly to the Appellant and the Respondent.
 - b. Each party shall bear their own costs, both in the trial court and on appeal.
22. Orders accordingly.

JUDGMENT DATED, SIGNED AND DELIVERED AT NYAMIRA VIRTUALLY VIA MICROSOFT TEAMS THIS 25TH DAY OF SEPTEMBER 2025.



W. A. OKWANY
JUDGE

