



**In re Estate of Simeon Nyachae (Also known as Simon Nyachae) - Deceased (Succession Cause E1780 of 2021) [2026] KEHC 1147 (KLR) (Family) (29 January 2026) (Judgment)**

Neutral citation: [2026] KEHC 1147 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
SUCCESSION CAUSE E1780 OF 2021  
EKO OGOLA, J  
JANUARY 29, 2026  
IN THE MATTER OF THE ESTATE OF HON. SIMEON  
NYACHAE (ALSO KNOWN AS SIMON NYACHAE) (DECEASED)**

**BETWEEN**

**MARGARET CHWEYA NYACHAE ..... 1<sup>ST</sup> APPLICANT  
CHWEYA RONEY DAVID ..... 2<sup>ND</sup> APPLICANT  
JOHN PAUL CHWEYA ..... 3<sup>RD</sup> APPLICANT  
PATRICIA CHWEYA ..... 4<sup>TH</sup> APPLICANT**

**AND**

**CHARLES AYAKO NYACHAE ..... 1<sup>ST</sup> EXECUTOR  
ANGELA NYARANGI NYACHAE MOCHACHE ..... 2<sup>ND</sup> EXECUTOR  
ERIC MAINA NYACHAE ..... 3<sup>RD</sup> EXECUTOR**

**JUDGMENT**

1. The late Simeon Nyachae died testate on 1<sup>st</sup> February 2021. By his last Will and Testament dated 9<sup>th</sup> September 2015, he appointed three of his children as the executors of his estate.
2. In Clause 12 of the Will, the deceased identified his surviving family members. He named his surviving widows as Grace Wamuyu Nyachae, Esther Nyaboke Nyachae, and Martha Mwangi Nyachae.
3. The deceased further listed his sons as Charles Ayako Nyachae, Kenneth Bitange Nyachae, Michael Moragia Nyachae, David Moragiah Nyachae, Noah Ndemo Nyachae, Lee Karue Nyachae, Moses Nyandusi Nyachae, Eric Maina Nyachae, Joseph Nyandusi Nyachae, and Leon Nyandusi Nyachae.



4. He also listed his daughters as Rosemary Mokeira Nyachae, Angela Nyarangi Nyachae, Mary Basweti Nyachae, Josephine Kwamboka, Esther Nyanganyi, Janice Kerubo, Felicity Bosibori, Jackeline Bosibori, and Pauline Bosibori Nyachae.
5. A Grant of Probate of the written Will was subsequently issued to the executors on 9<sup>th</sup> May 2022.

### **The Originating Summons**

6. The subject of this judgment is the Originating Summons dated 11<sup>th</sup> March 2022, where the applicants claim to be dependants and beneficiaries of the deceased estate. The applicants are not mentioned in the said Will of the deceased. Yet the applicants claim to be the widow and the children of the deceased.
7. The applicants have therefore prayed that this court determine the following questions:
  - a. Whether the applicants are related to the deceased by blood and marriage and hence qualify to be beneficiaries of the deceased estate, like other beneficiaries in the Will.
  - b. Whether the applicants qualify to be recognised as dependants of the late Simeon Nyachae and hence have a right to benefit as beneficiaries of the said estate.
  - c. Whether the exclusion of the Applicants in the Will by the deceased is unfair, discriminatory, and contrary to natural justice.
  - d. Whether the failure by the deceased to recollect all his family members raises questions as to the mental state of the deceased at the time of writing the aforesaid Will.
  - e. Whether the applicants who are sons and daughters of the deceased deserve equal recognition as heirs, and hence reasonable provisions should be applied to them equally with all other children who have been provided for in the Will.
  - f. Whether this court may order those other properties suspected not to have been included in the Will can be ordered to pass through the rules of intestacy.
  - g. Whether the applicants should be awarded the costs of this Originating Summons.
8. The Summons was supported by the affidavit of the 1<sup>st</sup> Applicant dated 11<sup>th</sup> March 2022 and a Replying affidavit dated 27<sup>th</sup> June 2023. She deposed that she got married to the deceased in 1973 through customary marriage. She deposed that some of the deceased family members and staff members knew about their union. She argued that the 1<sup>st</sup> executor referred to her as ‘mommy’ while the deceased bodyguard and secretaries referred to her as ‘Mrs Simeon Nyachae’.
9. The 1<sup>st</sup> applicant deposed that their union was blessed with three children; the 2<sup>nd</sup>–4<sup>th</sup> applicants. She added that she lived with the deceased, who provided for her and the children. She added that the deceased purchased a house for her in Loresho, close to the house he lived in till his death.
10. According to the 1<sup>st</sup> Applicant, the deceased, in an attempt to remove her from a hostile environment, relocated her and her children to the United States of America, where he would visit periodically. She deposed that her children grew up knowing that the deceased was their father. She reiterated that the deceased provided for all their needs, including schooling costs.
11. According to the 1<sup>st</sup> applicant, her marriage with the deceased straddled Kenya and the United States of America, and they enjoyed their relationship until the deceased became ill. During the illness of the deceased, she would be barred from seeing the deceased whenever she travelled back to Kenya. She added that she travelled to Kenya for the deceased’s funeral, which was staged at the Kisii stadium. She



was able to enter the stadium. However, after the burial service, when she moved to the deceased's village and his final resting place, she was asked to leave the compound by the 1<sup>st</sup> executor, who claimed that he did not know who she was.

12. The 1<sup>st</sup> Applicant asserted that she was faithful to the deceased and sought recognition of herself and her children as dependents of the deceased's estate. In an affidavit sworn on 27th June 2023, she further alleged that the deceased's Will was forged by the beneficiaries.

### **Respondents' Response to the Originating Summons.**

13. The Originating Summons was opposed by the respondents. They denied knowledge of the applicants and challenged the claims of marriage, parentage, and dependency.
14. The respondents deposed that the 1<sup>st</sup> applicant had been married to other men and was never married to the deceased under the abagusii customary law. They further asserted that the 2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> applicants were not children of the deceased and that there was no payment of dowry or recognition of the 1<sup>st</sup> applicant as a wife of the deceased, including at the deceased's ancestral home in Kegati.
15. The 4<sup>th</sup> applicant filed an affidavit dated 27<sup>th</sup> September 2023. She deposed that she is the 1<sup>st</sup> applicant's daughter; however, she goes by the name 'Patricia Moraa Odero' and not 'Patricia Chweya'. She deposed that her father is one George Gordon Odero and that this was confirmed by a DNA test taken in May 2022. She deposed that she has only known George Gordon Odero as her father, and she has never met or spoken to the deceased. According to the 4<sup>th</sup> applicant, she did not give her mother, the 1<sup>st</sup> applicant, authority to file this suit on her behalf, and she therefore dissociates herself from the suit.
16. On 25<sup>th</sup> February 2025, the Court directed that a DNA test be conducted to ascertain the paternity of the 2<sup>nd</sup> and 3<sup>rd</sup> Applicants, the issue of dependency and entitlement under the *Law of Succession Act* having been placed in dispute. However, on 15<sup>th</sup> May 2025, Mr. Omari, learned counsel for the Applicants, informed the Court that since the 2<sup>nd</sup> and 3<sup>rd</sup> Applicants forfeited their opportunity to conduct DNA testing, they renounced any blood relationship with the deceased. In the absence of scientific evidence or any other proof establishing a biological relationship with the deceased, the Court, on the said date, made a ruling and found that the 2<sup>nd</sup> and 3<sup>rd</sup> Applicants had failed to discharge the burden of proof and accordingly ruled that they had not been established as biological children of the deceased for purposes of succession.

### **The hearing**

17. The summons was canvassed by way of viva voce evidence in court. The applicant called six witnesses.
18. AW1 (1<sup>st</sup> Applicant) asserts that she met the deceased in 1972 and that, following a period of courtship, they contracted an Abagusii customary marriage in which dowry was allegedly paid through the deceased's relatives. However, no documentary or independent corroborative evidence was tendered to support the existence, nature, or completion of the alleged customary marriage, including evidence of the applicable customary law or proof of the alleged dowry payment.
19. The 1<sup>st</sup> applicant further testified that she cohabited with the deceased at various times both in Kenya and in the USA and that the deceased provided financial support to her and her children, including accommodation, upkeep, and education. While the Court notes these assertions, no documentary evidence, such as correspondence, financial records, or contemporaneous records, was produced to substantiate sustained cohabitation or continuous maintenance over the period alleged.



20. The Court has also considered the evidence relating to the alleged acquisition of property along Shinyalu Road, Loresho, and the 1<sup>st</sup> applicant's visits thereto. The evidence placed before the Court does not establish ownership, occupation, or contribution by the deceased in relation to the said property.
21. With respect to the period the 1<sup>st</sup> applicant resided and worked in the United States of America, the Court observes that while she asserts that the deceased joined her and lived with her as husband and wife, no travel records, photographs, correspondence, or third-party testimony were produced to confirm regular cohabitation or the nature of their relationship during that period.
22. The Court further notes the 1<sup>st</sup> applicant's account of difficulties in accessing the deceased in the later years of his life, including during his illness and prior to his death. While these circumstances may explain limited contact, they do not, without more, constitute proof of marriage, dependency, or entitlement under the *Law of Succession Act*.
23. The 1<sup>st</sup> Applicant denied having been married to any other man and maintained that all her children were biologically fathered by the deceased. This evidence, however, was tendered in the face of contrary testimony by RW4 (Michael Pondo), who stated that he knew the 1st Applicant as his wife and as the niece of the deceased; RW5 (Jacob Machuki Mokaya), who testified that he married the 1st Applicant in 1973 under Abagusii customary law and separated from her in 1979; and RW2 (Randy Wahl), a licensed private investigator, who produced evidence of multiple marriages contracted by the 1st Applicant in the United States of America, including marriages to George Gordon Odero in 1987 and James Leroy Totten in 1989, as well as records of name changes and a child support matter following the dissolution of one such marriage.
24. AW2 (3rd Applicant) testified that he was born on 5<sup>th</sup> July 1980 and stated that the deceased was his biological father and not Michael Pondo. He testified that the deceased visited them in the United States of America, although no photographic or documentary evidence of such visits was produced. He further stated that he did not recall the deceased providing financial support to the 1<sup>st</sup> Applicant and that he had never visited any house in Loresho. He deposed that he changed his surname to "Nyachae" after the death of the deceased.
25. AW3 (2<sup>nd</sup> Applicant) testified that he was a biological son of the deceased and not of Jacob Machuki. He stated that he had never met the said Jacob Machuki. He further testified that the deceased visited them in the United States of America and on one occasion gave the 1st Applicant an envelope. He stated that he resides in Loresho in a house registered in the name of the 1st Applicant and that the deceased provided for his needs, including school fees and upkeep.
26. AW4 (Peter Onsongo) testified that he had known the deceased for approximately thirty-eight (38) years and that they had lived together during that period. He stated that he became aware of the 1st Applicant in 1992 but only met her in person in 2021 during the deceased's funeral. He testified that he did not attend, nor was he aware of, any dowry ceremony between the deceased and the 1st Applicant.
27. AW5 (Thomson Omoengia Ndege), a watchman formerly employed by the deceased, testified that when he commenced employment, he found the deceased and the 1st Applicant living together as husband and wife. He further stated that the 1st Applicant subsequently visited the deceased's residence from the United States of America in the years 2002, 2003, 2006, 2008, 2016, 2017, and 2019.
28. AW6 (Walter Mariba Okemwa), a bodyguard formerly employed by the deceased, testified that he came to know the 1<sup>st</sup> Applicant in 2020 when she visited the deceased's office in Riverside. He stated that prior to that time, he had only heard about her from third parties and not directly from the deceased.



29. The Respondents called six (6) witnesses in support of their case.
30. RW1 (4<sup>th</sup> Applicant) testified that she is not a daughter of the deceased and stated that her biological father is George Gordon Odero. She further testified that the said George Gordon Odero provided for her upbringing and general welfare. RW1 dissociated herself from the suit.
31. RW2 (Randy Wahl), a licensed private investigator, testified that he was engaged by Leon Nyachae, one of the deceased biological children to conduct inquiries into the integrity of the applicants' claims. He stated that his investigations revealed two marriage certificates indicating that the 1<sup>st</sup> Applicant was married to George Gordon Odero in 1987 and to James Leroy Totten in 1989. He further testified that he identified several name changes by the 1<sup>st</sup> applicant, namely Margaret George, Margaret Totten, and Margaret Chweya. He also testified that there existed a child support record relating to the maintenance of one of the 1<sup>st</sup> applicant's children following the dissolution of one of the said marriages. He stated that the 1<sup>st</sup> Applicant adopted the name "Margaret Chweya Nyachae" after the death of the deceased, and that all the information obtained was drawn from public records in the United States of America.
32. RW3 (1<sup>st</sup> Executor) testified that the deceased had five wives, none of whom was the 1<sup>st</sup> Applicant. He stated that he was in Form Four in 1973 and neither recalled nor had any knowledge of an Abagusii customary marriage between the deceased and the 1<sup>st</sup> Applicant. He further testified that he met the 1<sup>st</sup> Applicant for the first time during the deceased's funeral, at which time he asked her to leave after a disagreement with his mother. He denied having communicated with the 1<sup>st</sup> Applicant on Facebook, as alleged.
33. RW4 (Michael Pondo) testified that he knew the 1<sup>st</sup> Applicant as his wife and as the niece of the deceased. He stated that the 3<sup>rd</sup> Applicant is his biological son. He further testified that he married the 1<sup>st</sup> Applicant under Abagusii customary law in 1979 and that they separated in 1987. He produced photographs showing his interactions with the Applicants in the United States of America. He stated that although the 2<sup>nd</sup> Applicant is not his biological son, he nonetheless provided for him by paying school fees. He further testified that he assisted the 1<sup>st</sup> Applicant in the purchase of the Loresho property and produced bank statements in support of this assertion.
34. RW5 (Jacob Machuki Mokaya) testified that he married the 1<sup>st</sup> Applicant under Abagusii customary law in 1973 and that they separated in 1979. He stated that the 2<sup>nd</sup> Applicant is his biological son, having been born in 1974. He produced a birth notification and photographs in support of this testimony and stated that the 2<sup>nd</sup> Applicant's name is Samuel Machuki.
35. RW6 (Leon Nyandusi Nyachae) testified that he only became aware of the existence of the 1<sup>st</sup> Applicant in 2021 during the deceased's burial. He stated that it was for this reason that he engaged a private investigator to conduct inquiries into the Applicants' claims.

### **Determination**

36. The parties were directed to file submissions.
37. I have carefully considered the Originating Summons herein, testimonies of the applicants and the respondents and the evidence provided by all the witnesses from both sides, as well as submissions from counsel.
38. From the record, the 4<sup>th</sup> applicant has deposed that she is not making any claim to the deceased estate, whether as a dependant or a beneficiary. Furthermore, the 2<sup>nd</sup> and the 3<sup>rd</sup> applicants by their own



election, submitted that they are not biological children of the deceased. In my view, therefore, the following issues arise for determination:

- a. Whether the 1<sup>st</sup> applicant was the wife of the deceased;  
If so;
- b. Whether the 1<sup>st</sup> applicant should be a beneficiary and dependant of the deceased estate.
- c. Whether the 2<sup>nd</sup> and 3<sup>rd</sup> applicants are dependants of the estate of the deceased.

### **Whether the 1<sup>st</sup> applicant was a wife of the deceased**

39. Section 43 of the *Marriage Act* provides as follows:

“a marriage under this part shall be celebrated in accordance with the customs of the communities of one or both of the parties to the intended marriage.

Where the payment of dowry is required to prove marriage under customary law, the payment of a token amount of dowry shall be sufficient to prove a customary marriage.”

40. Kenyan courts have consistently held that the existence of a customary marriage is a question of fact to be proved by evidence of compliance with the essential rites of the relevant community. In *Hortensiah Wanjiku Yawe v The Public Trustee* [1976] eKLR, the Court of Appeal affirmed that customary marriages are established through proof of applicable customary practices and not by cohabitation alone, which is merely corroborative.
41. With respect to Kisii (Abagusii) customary law, scholarly authority, including Nahashon Orera Onkwani’s “Marriage Culture Among the Abagusii in the Pre-Colonial Period” (*East African Journal of Traditions, Culture and Religion*, Vol. 6(1), pp. 132–146), identifies several key rites that signify a valid customary marriage. Central among these is the payment or formal agreement to pay bride price (ogotimia), which marks family consent and legitimises the marital union. Kenyan courts have repeatedly recognised bride price as a foundational element of customary marriage. In *Echaria v Echaria* [2007] eKLR and *Kimani v Kimani* [1980] KLR 364, the courts held that where bride price is an essential requirement under the applicable custom, proof of its payment or negotiation is critical in establishing a valid marriage.
42. Another significant rite is Ekeremo, the customary wedding ceremony, typically conducted at the bride’s or groom’s homestead and characterised by communal participation and celebration. Judicial authority has accepted evidence of such ceremonies as strong proof of marriage where required by custom. In *Gituanja v Gituanja* [1983] eKLR, the court held that evidence of a customary wedding ceremony attended by family members and elders carries substantial probative value.
43. The bride’s first formal meeting with the groom’s family (Ekeri-boko) reflects the communal nature of customary marriage, emphasising that marriage is a union between families rather than merely between individuals. In *Mbithi v Mbithi* [1976] KLR 40, the court underscored the necessity of family involvement and acknowledgment in proving a customary marriage.
44. Post-marital rites, such as the giving of a bridal name and the installation of anklets (ogotimia), symbolise the bride’s incorporation into the groom’s lineage. Kenyan courts have treated such rites as corroborative rather than determinative. In *Re Estate of M’Ngarithi M’Miriti (Deceased)* [2017] eKLR and *In re Estate of Mwaura Mutungi (Deceased)* [2019] eKLR, the High Court held that symbolic or post-marital practices may support proof of marriage but cannot, standing alone, establish its existence in the absence of evidence of essential rites.



45. Similarly, rituals involving the physical transfer of the bride such as being ceremonially escorted by her uncles, her reception at the groom's homestead, the spreading of lessos or khangas, and songs of celebration have been judicially associated with the concept of handover and public acknowledgement of marriage. In *Mwathi v Mwathi* [1995] eKLR, the court observed that such practices may mark the completion of marriage rites and acceptance into the groom's household. However, as reiterated in *Hortensiah Wanjiku Yawe*, communal repute and celebration serve a supplementary role and cannot replace proof of core customary requirements.
46. In sum, both scholarly authority and Kenyan jurisprudence converge on the position that while Abagusii customary marriage is characterised by multiple rites and ceremonies, the payment or agreement to pay bride price and family acknowledgement constitute the core elements of proof. Ancillary and symbolic rites serve a corroborative function and must be assessed cumulatively with evidence of the essential requirements.
47. The 1<sup>st</sup> Applicant claimed that she was married to the deceased under Abagusii customary law and therefore qualified as a "wife" within the meaning of section 3 of the *Law of Succession Act*. The burden of proving the existence of such a marriage lay entirely upon her. That burden was not discharged.
48. Under Kenyan law, a customary marriage is a question of fact which must be strictly proved by evidence of compliance with the essential rites of the relevant community. Courts have consistently held that mere assertion, long association, or subjective belief is insufficient. In the *Hortensiah Wanjiku Yawe* case, the court emphasised that proof of customary marriage requires credible evidence of the performance of the requisite customary rites, particularly bride price negotiations or payment and family acknowledgement.
49. In the present case, the 1<sup>st</sup> Applicant failed to produce any evidence demonstrating the performance of essential Abagusii customary marriage rites, including but not limited to the negotiation or payment of bride price (ogotimia), the conduct of a customary wedding ceremony (Ekeremo), or formal introduction and acceptance by the deceased's family. No witness was called to attest to the occurrence of any such ceremony. Notably, no clan elder, family member, or other person traditionally involved in Abagusii marriage rites testified in support of the alleged marriage.
50. In *Gituanja v Gituanja* [1983] eKLR and *Mbithi v Mbithi* [1976] KLR 40, photographs, cohabitation, or social interaction may at best serve a corroborative role but cannot, without proof of the essential rites, establish a valid customary marriage. Social interactions alone do not demonstrate compliance with customary law requirements and cannot substitute for direct evidence of the performance of marriage rites.
51. In the absence of proof of a valid customary marriage, the 1<sup>st</sup> applicant does not qualify as a "wife" under section 3 of the *Law of Succession Act*. The claim that the 1<sup>st</sup> Applicant was married to the deceased under Abagusii customary law is therefore rejected in its entirety.
- b. Whether the 1<sup>st</sup> applicant should be a beneficiary and dependent of the deceased estate.
- c. Whether the 2<sup>nd</sup> and 3<sup>rd</sup> applicants are dependents of the estate of the deceased.
52. Having found that the 1<sup>st</sup> Applicant was not a wife of the deceased within the meaning of section 3 of the *Law of Succession Act*, and further having found that the 2<sup>nd</sup> and 3<sup>rd</sup> Applicants were not biological children of the deceased, the Court must now determine whether any of the Applicants nonetheless qualify as dependants of the deceased under section 29 of the Act.



53. Section 29 of the *Law of Succession Act* defines a dependant as a person who was maintained by the deceased immediately prior to his death. The provision establishes a statutory framework that distinguishes between categories of dependents and the evidentiary burden applicable to each category.
54. Under section 29(a), the Act recognises as dependants the wife or wives of the deceased, former wives, and the children of the deceased, whether or not they were being maintained by the deceased immediately prior to death. Courts have consistently held that persons falling within this category qualify automatically as dependants by virtue of status alone, without the need to prove actual maintenance. See *Re Estate of George M'Mboroki (Deceased)* [2018] eKLR and *In re Estate of Solomon Ngatia Kariuki (Deceased)* [2020] eKLR.
55. The second category of dependants is provided for under sections 29(b) and (c) and includes the deceased's parents, step-parents, grandparents, grandchildren, step-children, children taken into the family as the deceased's own, siblings, and, in the case of a deceased woman, her husband, provided that such persons were being maintained by the deceased immediately prior to death. In contrast to section 29(a), dependency under this category is not presumed and must be strictly proved by evidence of actual maintenance. This position has been reaffirmed in *Re Estate of the Late J M M (Deceased)* [2015] eKLR and *In re Estate of M N N (Deceased)* [2017] eKLR.
56. In the present case, none of the applicants falls within the automatic category of dependants under section 29(a). The 1<sup>st</sup> Applicant has not been proved to be the wife of the deceased, and the 2<sup>nd</sup> and 3<sup>rd</sup> applicants are now known not to be his biological children. Their claims must therefore be assessed strictly under sections 29(b) and (c), which require proof of maintenance immediately prior to the deceased's death.
57. The 1<sup>st</sup> Applicant alleged that the deceased maintained her and that he paid for the purchase of the Loresho property, notwithstanding that the property is registered in her name. However, she failed to produce any documentary or other credible evidence linking the deceased to the purchase or financing of the said property. In contrast, RW4 (Michael Pondo) produced bank statements evidencing his contribution towards the purchase price of the property. This evidence was not challenged or rebutted. The Court therefore finds no nexus between the deceased and the acquisition or maintenance of the Loresho property.
58. The Court further notes that there is no credible evidence demonstrating that the deceased maintained the Applicants during the period they resided in the United States of America. The 4<sup>th</sup> Applicant testified that she never met the deceased. Although the 2<sup>nd</sup> and 3<sup>rd</sup> Applicants claimed that the deceased visited them in the United States, no documentary or photographic evidence was produced to corroborate these assertions. This stands in stark contrast to the evidence tendered by RW4 and RW5, who both claimed biological paternity and produced documentary records, photographs, and other material demonstrating financial support and involvement in the lives of the 2<sup>nd</sup> and 3<sup>rd</sup> Applicants.
59. The Court also takes into account the uncontested evidence of RW2 (Randy Wahl), a licensed private investigator, who produced public records from the United States evidencing the 1<sup>st</sup> Applicant's marriages to George Gordon Odera and James Leroy Totten, as well as multiple name changes over the years. There is further evidence on record of name changes by the 2<sup>nd</sup> and 3<sup>rd</sup> Applicants. This body of evidence raises serious doubt as to the alleged continuous presence, maintenance, or parental role of the deceased in the lives of the Applicants.
60. According to the jurisprudence of the courts, dependency under section 29(b) and (c) must be proved by clear and cogent evidence of actual maintenance immediately prior to death, and that mere assertions of support, emotional attachment, or sporadic contact are insufficient. In *Re Estate of*



- Margaret Njoki Njoroge (Deceased) [2016] eKLR, the Court held that dependency is a question of fact and that mere assertions of assistance, affection, or past support are insufficient; a claimant must demonstrate actual, regular, and substantial maintenance by the deceased immediately prior to death.
61. Similarly, in *In re Estate of the Late Gedion Manthi Nzioka (Deceased)* [2015] eKLR, the court emphasized that dependency cannot be inferred from family proximity or generosity and must be established through tangible and credible evidence of maintenance, failing which such claims must be rejected.
  62. In the absence of credible evidence establishing that the deceased maintained the 1<sup>st</sup>, 2<sup>nd</sup>, or 3<sup>rd</sup> Applicants immediately prior to his death, the Court finds and holds that none of them qualifies as a dependant within the meaning of section 29 of the *Law of Succession Act*.
  63. Accordingly, the Court holds that the 1st Applicant is neither a beneficiary nor a dependant of the deceased's estate, and that the 2<sup>nd</sup> and 3<sup>rd</sup> Applicants are likewise not dependants of the estate. Their claims for provision under the *Law of Succession Act*, therefore, fail.
  64. In contrast, RW-4 and RW-5, who testified as the biological fathers of the 3<sup>rd</sup> and 2<sup>nd</sup> applicants, respectively appeared before this Court and gave clear, consistent, and credible evidence detailing their relationship with, and provision for, the said Applicants prior to their relocation to the United States of America by the 1<sup>st</sup> Applicant. The Court found their testimony cogent and persuasive.
  65. The evidence on record establishes that the biological fathers of the 2<sup>nd</sup> and 3<sup>rd</sup> Applicants are alive and have acknowledged their parental responsibility. In law, succession rights flow from biological or legally recognised parentage. Where such parentage has been established, any claim to inheritance lies, if at all, against the estate of the biological parent and not against the estate of a person with whom no biological or legal relationship has been proved.
  66. The Court therefore finds that the 2<sup>nd</sup> and 3<sup>rd</sup> Applicants have neither a legal nor a factual basis upon which to claim inheritance from the estate of the deceased. Their claim does not fall within the parameters of the *Law of Succession Act*, either as beneficiaries or as dependants.
  67. The Court further notes that the 4<sup>th</sup> Applicant expressly distanced herself from these proceedings. While the Court makes no determination on matters of personal choice or motivation, her position underscores the absence of any sustainable legal claim against the estate of the deceased by the Applicants herein.
  68. Furthermore, the totality of the evidence before the Court raises serious doubt as to whether the deceased played any active or sustained role in the lives of the Applicants. In contrast, the individuals who testified as the biological fathers of the 2<sup>nd</sup> and 3<sup>rd</sup> Applicants appeared before the Court and gave clear and consistent accounts of their parental relationship and the care and support they provided to the said Applicants prior to their relocation to the United States of America by the 1<sup>st</sup> Applicant.
  69. In my view, the biological fathers of the 2<sup>nd</sup> and 3<sup>rd</sup> Applicants are alive and have acknowledged their parental relationship. Any claim to inheritance based on paternity properly lies, if at all, against the estates of their respective fathers and not against the estate of the deceased.
  70. The 2<sup>nd</sup> and 3<sup>rd</sup> applicants have no moral or legal rights to claim inheritance from the estate of the deceased. Their sister, the 4<sup>th</sup> applicant, who is much younger than them, has demonstrated maturity and morality and disowned these proceedings. The road chosen by the 2<sup>nd</sup> and 3<sup>rd</sup> applicants is closed. They should look for inheritance from John Machuki Mokaya and Michael Pondo, respectively.
  71. Accordingly, the claims advanced by the 1<sup>st</sup>-3<sup>rd</sup> Applicants against the estate of the deceased are baseless.



72. It is clear from the foregoing that the only orders this court can legitimately make in this matter are:
- a. That the 1<sup>st</sup> applicant was not a wife to the deceased
  - b. That the 2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> applicants are not biological children of the deceased
  - c. That the 1<sup>st</sup>-4<sup>th</sup> applicants are not dependants of the deceased
  - d. That the Originating Summons dated 11<sup>th</sup> March 2022 is dismissed
  - e. As for costs, the parties herein are not families, costs must therefore follow the cause. The costs herein shall be for the respondents.

Orders accordingly.

**DATED AND DELIVERED AT NAIROBI THIS 29<sup>TH</sup> DAY OF JANUARY 2026**

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**E.K. OGOLA**

**JUDGE**

In the presence of:

Mr. Amimo h/b for Mr. Adanga for the 1<sup>st</sup> Petitioner

Dr. Kanyari for Kenneth Nyachae

Mr. Danstan Omari for the 1<sup>st</sup> Applicant

Ms. Ng'ang'a h/b for Mr. Gitonga for the 3<sup>rd</sup> and 4<sup>th</sup> Respondent

Mr. Muchiri appearing for all the executors.

Gisiele Muthoni Court Assistant

