



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

SUCCESSION CAUSE NUMBER 237 OF 2016

IN THE MATTER OF THE ESTATE OF RACHAEL GATHONI

NG'ANG'A (DECEASED)

JULIA WAMBUI NG'ANG'A -----

PETITIONER

VERSUS

PETER KANYI NG'ANG'A -----

OBJECTOR

JUDGEMENT

1. Julia Wambui Ng'ang'a ("the Petitioner") filed this Petition dated 12/04/2016 for Grant of Letters of Administration in respect of the Estate of Rachael Gathoni Ngang'a ("the deceased"). The Grant was issued to her on 20/09/2016.

Earlier, Peter Kanyi Ng'ang'a ("the Objector) had lodged his objection to the Petition dated 13th September 2016 but the Objection was apparently not determined before the Grant was issued. On 18/09/2018, the court directed upon consent of the parties that the parties' statements and affidavits on record would be treated as their evidence upon which they would cross-examine each other. Hearing was further ordered to proceed by *viva voce* evidence.

2. The matter had been partly heard before a different court when this court took over on 14/10/2020. Hearing proceeded from the point the immediate former court had left off.
3. The Objector contends *inter alia* that the Petitioner is not the only beneficiary of the deceased's Estate. He fears that the Petitioner intends to administer the Estate fraudulently and deny him his equal share thereof. Saying that he was the deceased's step-son, the Objector claims that his also deceased father had moved him onto his parcel of land known as Mau Narok/Siapei Block 2/41 (Mutukanio "B"), The land of the deceased herein is adjacent to it. He lived

on the land with his father and the deceased herein who was his father's second wife, until her demise in 1998. The Objector further states that his father also died thereafter in 2006. At the time the Petitioner was said to reside in Mau Narok with her husband. According to the Objector, his father did not file Succession proceedings over his deceased's wife's Estate. His father had allegedly left the land for him and the Petitioner in equal shares. In line with the Objector's father's wishes, the court is told that the land was subdivided into two equal portions.

4. The Objector continues to testify that the Petitioner went ahead to acquire or take control of her share which she sold off after subdividing it into plots.
5. The Objector furthers states that he was the one who took care of his deceased step-mother while she was sick.
6. The Objector's witnesses No. 2, 3 and 4 confirm his evidence. One of them is his brother.
7. The Petitioner on her part, told the court that she was the deceased's only biological child. The deceased left the above described parcel of land known as Mau Narok/Siapei

Block 2/41 (“Mutukanio “B”) which was registered in her name. The deceased is said to have bought the land from Mutukanio Land Company. As noted by the Objector as well, the Petitioner states that their deceased father also had his own land. Even the Objector’s biological mother had her own land.

8. The Petitioner told the court that she voluntarily offered to give a portion of her mother’s Estate to the Objector but he is ungrateful and instead claims half of the Estate. She concedes that the Objector never got a share of their father’s Estate. She denies having sold part of the deceased’s land, saying that she only leased part thereof. The Petitioner also denied attending any family meeting during which distribution of the property including the deceased’s Estate was discussed.
9. The parties filed written submissions on the matter. The Objector submits citing **Section 29 of the Law of Succession Act.**, that as the deceased’s step-son who was being maintained by her prior to her death, he is a dependant of the deceased entitled to a share of the Estate.

The court is urged to issued Grant of Letters of Administration herein to the Objector and the Petitioner jointly.

10. The Petitioner retorts that the Objector has not proven maintenance by the deceased prior to her demise so as to be entitled to the Estate under **Section 29 of the Law of Succession Act** *supra*.
11. The Petitioner further relied on **Section 38 of the Law of Succession Act** which grants a surviving child or surviving children of a person who dies intestate, the right to inherit the Estate. She attacks any purported subdivision of the deceased's Estate without grant of letters of Administration as intermeddling with the Estate in terms of **Section 45 of the Law of Succession Act**.
12. There is no dispute that the Objector lived with his deceased step-mother and father on the disputed parcel of land before their demise. There is no evidence that he acquired any other land from his parents since his deceased's father's Estate was shared out among siblings from his mother's side as also confirmed by the Petitioner.

It is noteworthy that the Petitioner has offered him a portion of her mother's Estate notwithstanding that he is only her step-brother. This corroborates the Objector's legitimate entitlement to the deceased's Estate. As he lived with both his parents before their demise, he was dependent on them in the circumstances.

13. In the result, the Objector has proven his claim to the Estate of the deceased herein. This court finds and holds that he is entitled to half the Estate. To finally administer the Estate, the Petitioner and the Objector are hereby appointed as joint Administrators of the Estate. Consequently, the Grant dated 20/9/2016 issued to the Petitioner is revoked.
14. Ruling accordingly.

J.M. NANG'EA - JUDGE.

Judgement Delivered virtually this 4th day of May, 2026.

In the presence of:

Petitioner's Advocate, Mr. Kiburi

Objector's Advocate, Ms Wangari for Mr. Waiganjo

Court Assistant (Jeniffer)

J.M. NANG'EA - JUDGE.

Original