



REPUBLIC OF KENYA



KENYA LAW
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In re Estate of Evanson Mbugua Thong'ote (Deceased) (Succession Cause 6 of 2017) [2024] KEHC 9967 (KLR) (26 July 2024) (Ruling)

Neutral citation: [2024] KEHC 9967 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
SUCCESSION CAUSE 6 OF 2017**

A MSHILA, J

JULY 26, 2024

IN THE MATTER OF THE ESTATE OF EVANSON MBUGUA THONG'OTE (DECEASED)

RULING

1. Before court is the Amended Summons General dated 16th January, 2023. Nelson Njuguna Mbugua a beneficiary of the deceased's estate sought for orders:-
 - a. Spent
 - b. That this Honourable Court do issue directions for the expeditious disposal of this application.
 - c. That the Late Grace Njeri Mbugua be removed as an Administrator of the estate of the late Evanson Mbugua Thong'ote.
 - d. That the Certificate of Confirmation of grant of the above estate issued on 6th February 2020 be rectified and the property be re-distributed as per the attached revised schedule of distribution.
 - e. That if prayer (c) and (d) above are allowed, this Honourable Court do issue an order authorizing the Deputy Registrar Family Division, Kiambu High Court to execute all the necessary documents on behalf of the surviving Administrator (Hannah Wanjiku Mbugua) and all other beneficiaries in execution of the Transmission, subdivision and processing of the Title documents and all other assets as per the Rectified Certificate of Confirmation of Grant of the estate of Evanson Mbugua Thong'ote (deceased) issued as per prayer d above.
 - f. That this Honourable Court do issue an order directing the following government surveyors to undertake the subdivision of the following parcels of land as per the rectified certificate of Confirmation of Grant issued pursuant to prayer d above.



| No. | Government Surveyor | Parcel of Land |
|------------------------------|---|----------------|
| District Surveyor, Kiambu | LR.12368 North West of Kikuyu Station (Mega Farm) | |
| District Surveyor, Kiambu | LR No. Ndeiya/Makutano 833 | |
| District Surveyor, Naivasha | Rare Farm (Mai Mahiu) | |
| District Surveyor, Naivasha | LR. Kijabe/kijabe Block 1/818 | |
| District Surveyor, Nakuru | LR No.10242/14 South Nakuru Municipality | |
| District Surveyor, Nyandarua | LR Nandarua/Gatimu (Githanje/B/1/306 | |
| District Surveyor, Kiambu | Shares and Benefits in Gatina Farm | |

- g. That this Honourable Court do issue an order directing the following Land Registrars to transmit the following parcels of land to the respective beneficiaries without obtaining the National Identity Card, Passport Picture and KRA Pin of both the Administrator (Hannah Wanjiku Mbugua) and the beneficiaries that might be non co-operative in per taking of the transmission process;



| No. | Land Registrar | Parcel of Land |
|---------------------------|---|----------------|
| Land Registrar, Kiambu | LR.12368 North West of Kikuyu Station (Mega Farm) | |
| Land Registrar, Kiambu | LR No. Ndeiya/Makutano 833 | |
| Land Registrar, Naivasha | Rare Farm (Mai Mahiu) | |
| Land Registrar, Naivasha | LR. Kijabe/kijabe Block 1/818 | |
| Land Registrar, Nakuru | LR No. 10242/14 South Nakuru Municipality | |
| Land Registrar, Nyandarua | LR Nandarua/Gatimu (Githanje/B/1/306 | |
| Land Registrar, Kiambu | Shares and Benefits in Gatina Farm | |

- h. That this Honourable Court do issue an order directing the Deputy Registrar of the High Court Family Division, Kiambu to execute on behalf of the surviving administrator (Hannah Wanjiku Mbugua) and the beneficiaries of the estate of Evanson Mbugua Thong'ote all the documents required to transmit to the beneficiaries of the estate all other assets as per the rectified certificate of confirmation of grant issued pursuant to prayer d above.
- i. That this Honourable Court do issue an order allowing the deputy registrar family division Kiambu High Court to access, withdraw and expend funds from KCB Bank account number xxxxxx or in the alternative to reclaim the funds from the Unclaimed Financial Assets Authority, to aid in the subdivision, transmission and processing of the title deeds for the above assets of the estate of Evanson Mbugua Thong'ote.
- j. That this Honourable Court do issue an order directing the surviving Administrator (hannah Wanjiku Mbugua) to file a detailed statement of account of the dividends of Kshs. 700,481/= she or her son George Gitau Mbugua received from Muguga Investment Company Limited on 14th October 2022 vide Kenya Commercial Bank Cheque Number xxxx on behalf of the shares owned by the estate of Evanson Mbugua Thong'ote pursuant to a special general meeting of the company that was held on 22nd October, 2022.
- k. That this Honourable Court do issue an order directing the surviving administrator (Hannah Wanjiku Mbugua) to distribute equally amongst the 2nd and 3rd houses of the estate of Evanson Mbugua Thong'ote as per the rectified certificate of confirmation of grant, the dividends of Kshs. 700,481/= she or her son George Gitau Mbugua received from Muguga Investment Company Limited on behalf of the estate of Evanson Mbugua Thong'ote during the special general meeting of the company held on 22nd October, 2022.



1. That this Honourable Court do issue an order to the effect that all the above cited tasks be undertaken expeditiously and within the shortest period possible taking into account the age of the matter and because some of the beneficiaries of the estate of Evanson Mbugua Thong'ote are now deceased and some are also advanced in age and sickly.
2. The application is supported by the affidavit of Nelson Njuguna Mbugua. He deposed that Grace Njeri Mbugua (deceased) be removed as an administrator of the deceased's estate and that the Certificate of Confirmation of Grant issued on 6/2/2020 be rectified as per the attached schedule of distribution as the 2nd house has consented to have the share of the Late Grace Njeri Mbugua shared equally amongst themselves. Further that Lucy Wanjiku died before her share of the deceased's estate had been transmitted to her as such her children have agreed to equally share their mother's share necessitating the rectification of the Certificate of Confirmation of grant to reflect the amendment. That the share of the Late Teresiah Nyokabi Njeru should be transmitted to her only surviving son Kennedy Mbogo. That the deceased's estate is expansive as such subdivision as is will be expensive as such the 2nd house has agreed on the revised schedule of distribution. That the surviving administrator being advanced in age has misused her powers as her son George Gitau is the one receiving dividends and leaving out the beneficiaries of the 2nd house as such the Deputy Registrar should step in to ensure expeditious transmission of the estate.
3. George Gitau a member of the 3rd family filed his affidavit sworn on 10th May, 2023. He deposed that he was provided for during the deceased's lifetime as such he is not interested with any of the deceased's assets. He averred that his mother is the only surviving spouse as such the issue of accounting does not arise. He annexed the distribution of the monies where it was agreed that the same should be paid to the widows. He contended that Plot no. 6 for Nderi B was given to him before the demise of his father.
4. Lawrence Njuguna filed his statement dated 10th May, 2023. He stated that the property in Nyahururu was 1 share of 3 acres each amounting to 30 acres. That Njunu B1 was in the name of the deceased and the title documents are share certificates which the 2nd family used to illegally transfer to themselves 24 acres during the pendency of the case. He averred that the application herein cannot be granted pending the determination of the issues in regard to the 30 acres of Plot B1 Nyahururu. That Hannah Wanjiku Mbugua cannot be removed as an administrator as she was legally appointed by the court and that Grace Njeri Mbugua should be substituted. He contended that the rectification can only be done with the consent of all parties.
5. Nelson Njuguna Mbugua filed his further affidavit to the statement of Lawrence Njuguna dated 5th June, 2023. He deposed that he is not aware of the 10 share certificates from Njunu B1 and that Lawrence never attached evidence of their existence. He contended that the Judgment in Civil Appeal no. 15 of 2017 is still valid as the same has never been challenged. That the estate is wasting away since 2020 hence the prayer for the Deputy Registrar to execute the necessary documents to enable transmission. That where there is a surviving administrator, then substitution does not arise. The orders sought were said to only affect the 2nd house as such the same will not be prejudicial to the 3rd house.
6. Subsequently, Nelson Njuguna Mbugua in his further affidavit dated 5th June, 2023 in response to the affidavit of George Gitau, he deposed that according to the grant the shares of the deceased's estate in Muguga Investment Company Limited were to be shared equally amongst the two houses as such the agreement arrived at by the shareholders of Muguga Investment Company Limited cannot supersede the grant. He averred that Hannah Wanjiku Mbugua is not the only beneficiary of the shares at Muguga Investment Company as the same should be shared by the two houses and that the administrators of the deceased's have failed to administer the estate within 6 months hence the instant



application. Further that the surviving spouse should give an accurate account of the deceased's assets including the dividends from Muguga Investment Company which ought to have been transmitted to their respective beneficiaries being the two houses as such the dividends of Kshs. 700,481/= should be distributed. He contended that plot no. 6 Nderi B was to be shared equally among the two houses or be sold in the event the event at KCB bank account xxxxxx are not sufficient to meet the expenses for distribution. That the impugned oral will was set aside by the Court of Appeal as such all the assets of the deceased were subject to intestate succession. In any case, George Gitau has not produced any evidence to support his claim that he owns Plot No. 6 Nderi B. he deposed that his application was for purposes of reducing cost for the 2nd house and does not in any way affect the 3rd house and the Deputy Registrar is only being called upon to execute documents as the administrator has failed to take the necessary steps. In any case the same is not opposed by the surviving administrator.

7. Nelson Njuguna Mbugua filed a further affidavit dated 1st September, 2023, where he stated that George Gitau attended a special general meeting and illegally collected 2 dividend cheques of Kshs. 269,849 and 41,119 totalling to Kshs. 310,967/= which was to be shared equally between the two houses as per the Grant which amounted to intermeddling as such the same should be distributed equally and that the court should bar any unauthorized person from collecting any further dividends.
8. The Applicant filed his written submissions which were followed by the Respondent's oral submissions.

Applicant's Written Submissions

9. The Applicant submits that an administrator of an estate cannot be substituted. Reliance was placed in the case of *John Karumwa Maina v Susan Wanjiru Mwangi* (2015) eKLR. It was submitted that the surviving administrator has never taken any steps towards the administration of the deceased's estate. It was further submitted that the order for redistribution is because it is expensive to distribute as set out in the Grant and the redistribution will avoid the beneficiaries being scattered all over with small portions and that the 2nd house is agreeable to the distribution as per the schedule in the amended summons general. In any case the redistribution does not affect the 3rd house as such they should not be opposed to the application. The surviving administrator was said to have failed in her duties hence the need for the deputy registrar to execute all the necessary documents to effect transmission. Lastly, it was submitted that the grant provided that the shares at Muguga Investment Company should be shared equally between the two houses which is not the case herein as the surviving administrator has since received Kshs. 700481/= as such she should submit an account and distribute the said funds between the two houses. The court was urged to allow the application.

Respondent's Oral Submissions

10. Mr. Wachira, Counsel for the 3rd house, opposed the Applicant's application. That review of the mode of distribution was ordered by Meoli J. that the Applicant acknowledges the difficulty in distributing the estate hence the delay in the administration of the estate. That the Deputy Registrar can only execute the documents if the administrator defies an order of the court. He submitted that it is illegal to order that the Land Registrar to dispense with production of documents during transmission. It was submitted that land does not waste but appreciates with time. He contended that the judgment by Meoli J. was easy and clear. The land was said to still be held by the company as it is difficult to subdivide. The age of the administrator was said not to be a factor as such the court was urged to dismiss the application.
11. Mr. Okumu counsel for the 2nd house prayed that the name of the deceased administrator to be removed and the surviving administrator to remain. The main issue was said to be that no steps have



been undertaken to execute the grant issued by the court. That the Kshs. 700,000/= should have been shared. The main prayers were said to only touch on the 2nd house and that the remaining administrator is not opposed to the application. The affidavit of George was said not to respond to the application. The monies in Muguga Investment Company was withdrawn and the same was not accounted for since 2020 when the grant was confirmed. The administrator was said to have failed in her duties of administration.

12. In rejoinder, Mr. Wachira stated that the surviving widow received the monies as per the policy of Muguga Investment Company.

Issues For Determination

13. After reading the application and the parties written and oral submissions this court has framed the following issues for determination;
 - a. Whether to Revoke the Grant due to the demise of the co-administrator
 - b. Whether to rectify the of the Certificate of Confirmation

Analysis

Whether to Revoke the Grant due to the demise of the co-administrator

14. The Grant was issued in the joint names of Hannah Wanjiku Mbugua And Grace Njeri Mbugua who is now deceased. The applicable law is found at Section 76 (e) of the [Law of Succession](#) which provides that the legal position is that where an administrator passes away the Grant becomes useless and inoperative therefore the Applicant must first apply to have the initial Grant revoked and a prayer that a fresh Grant be issued;
15. This court will therefore proceed to revoke the Grant under the provisions of Section 76 (e) as it has become useless and inoperative and directs a fresh Grant be issued in the sole name of Hannah Wanjiku Mbugua as the administrator.

Whether to rectify the of the Certificate of Confirmation

16. This Court notes that apart from Grace Njeri Mbugua being deceased there are two other beneficiaries Lucy Wanjiku and Teresia Nyokabi Njeru who have also passed away and their estates have no legal representatives;
17. This court shall not belabor itself in addressing the issues of rectifications piecemeal and directs that the application be determined when the administrators have been appointed.

Findings & Determination

18. This court finds the Grant issued has become useless and inoperative due to the demise of the Late Grace Njeri Mbugua; The Grant is hereby revoked and fresh Grant be and is hereby issued in the name of the surviving administrator Hannah Wanjiku Mbugua.
19. The rectification of the Certificate of Confirmation of Grant as proposed be held in abeyance pending issuance of Limited Letters of Administration for the Estates of Grace Njeri Mbugua, Lucy Wanjiku and Teresia Nyokabi Njeru.
20. Mention on 2/10/2024 for compliance, directions and final orders.

Orders Accordingly



DATED SIGNED AND DELIVERED VIA TEAMS AT KIAMBU THIS 26TH DAY OF JULY, 2024.

A. MSHILA

JUDGE

In the presence of;

Mourice – Court Assistant

