



REPUBLIC OF KENYA



**In re Estate of the Late Nathaniel M'Ruteere M'Muketha (Miscellaneous Case E230 of 2023) [2024] KEHC 11694 (KLR) (Family) (26 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 11694 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
MISCELLANEOUS CASE E230 OF 2023  
PM NYAUNDI, J  
JULY 26, 2024**

**BETWEEN**

**RAEL NKOROI RUTEERE ..... APPLICANT**

**AND**

**ISAAC MARETE MUGAMBI ..... 1<sup>ST</sup> RESPONDENT**

**DENIS MBICHI MBOROKI ..... 2<sup>ND</sup> RESPONDENT**

**DR JULIUS KITHINJI KAJUME ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. Before this court is the Originating Summons dated 24<sup>th</sup> October 2023 in which the Applicant seeks the following orders;-
  1. Spent.
  2. That this Honourable Court be pleased to order the Trustees to adequately provide for the Applicant.
  3. That this Honourable Court be pleased to order the Trustees to raise the Applicant's allowance to Kshs. 150,000 per month or such other sum as the court may deem reasonable in the circumstances.
  4. That this Honourable Court do issue such further orders as it may deem necessary for the ends of justice to be met.
2. The Summons was supported by the Affidavit of even date sworn by the Applicant. Her case was that she was the surviving widow of the deceased. The deceased left a will dated 30<sup>th</sup> July 2005 where he appointed the Respondents as Trustee and Executors of his will. The deceased directed the trustees



- not to sell any property as long as there was a surviving widow and/or a child below 18 years. Income realized from the estate was to be used to assist deserving beneficiaries and invest on behalf of the estate.
3. She averred that the deceased's children are all adults and capable of taking care of themselves except for one, Charity Gaiti who is mentally disabled and requires care and attention from her throughout. Charity was born before her marriage to the deceased but the deceased had accepted her as a dependant.
  4. She averred that she has been receiving Kshs. 15,000 from the estate. That Kshs. 15,000 was not enough to cater for her needs and that of her special daughter and her children managed to convince the trustees to increase her stipend to Kshs. 25,000. The amount was increased to Kshs. 50,000 with a promise to provide a washing machine, orthopedic mattress, fridge, gas cooker and a wheel chair for her disabled child. She told the court that she has only received a washing machine. She argued that the deceased's estate is vast and has a monthly income of almost Kshs. 1 million and therefore, her needs should be met.
  5. The summons was opposed by the 3<sup>rd</sup> Respondent vide a Replying Affidavit sworn on 5<sup>th</sup> December 2023. His case was that the deceased did not leave a vast estate. He left a little amount in his bank accounts and only two properties which generate income: Meru Municipality Block 1/6 (Mwendantu Plot) Residential and Meru Municipality Block 6 (Ruteere House) Commercial. At the time of the deceased's death, the ground floor of Ruteere House was complete and occupied. With the consent of the beneficiaries, the trustees built the 1<sup>st</sup> and 2<sup>nd</sup> floors which have also been occupied. They are currently building the 3<sup>rd</sup> and 4<sup>th</sup> floor. He denied that Charity Gaiti was a beneficiary of the estate of the deceased.
  6. He averred that before the deceased died, he established a family dispute resolution mechanism comprising an executive committee of 3 sons of the deceased from each house, an extended committee of 6 from the 3 houses of the deceased and the chairman was Francis Muthuuri Warutere. That the trustees refer any dispute to the family committee and only vary decisions when necessary and in the interest of the estate. That the minutes of the family meeting held on 17<sup>th</sup> March 2023 itemized the needs of the applicant all totaling to Kshs. 35,000. On 23<sup>rd</sup> March 2023, the trustees agreed to review her monthly stipend from Kshs. 15,000 to Kshs. 25,000.
  7. The Applicant was again dissatisfied with the amount and another special meeting between the trustees and the family committee executive was held on 20<sup>th</sup> May 2023. The applicant's stipend was increased to Kshs. 35,000. During the annual meeting on 24<sup>th</sup> June 2023, it was agreed that her stipend be increased to Kshs. 50,000.
  8. That the applicant has not disclosed that the trustees pay for her medical expenses and transport not covered by NHIF. So far, they have paid Kshs. 257,675 from the estate. He argued that the estate is running on a deficit of Kshs. 163, 932. The trustees have paid medical bills, school fees, bought land, offered financial support for needy beneficiaries and executed the deceased's will including transferring land to the beneficiaries. He averred that the Applicant has a farm which is part of the deceased's estate. The farm generates income. He urged the court to dismiss the applicant's Summons on the ground that her demands were too high and unreasonable considering the cash flow capacity of the estate.
  9. Festus Muthuuri Warutere filed a Replying Affidavit sworn on 5<sup>th</sup> December 2023. He deponed he is the son of the deceased from the house of Hannah Kungu. His case was that Charity Gaiti is not a beneficiary of the deceased's estate. She came to live with the applicant after the deceased's death. He put the applicant to strict proof that the Charity was a beneficiary or was being maintained by the deceased before he died. He averred that the minutes of 17<sup>th</sup> March 2023 do not show that there was a request for a wheel chair as alleged by the applicant. That the applicant's intention is to extort



the deceased's estate while she can register Charity in government institutions as someone living with disabilities.

10. He averred that the applicant has a home stead that is well equipped with water, electricity and a safe compound. That the trustees have tried to balance the interests of all beneficiaries in accordance with clause 10 of the will. He urged the court to dismiss the applicant's suit with costs and refer the matter to the family dispute resolution mechanism.
11. In response to the Replying Affidavits, the applicant filed an affidavit dated 22<sup>nd</sup> January 2024. She averred that the deceased allowed Charity to live with them, provided her food and maintenance through her. That the trustees have continued respecting the deceased's wishes by paying Charity's medical insurance and medical expenses. She denied the allegation that she has a good house and stated that her house is made of iron sheets which leak when it rains. That she has been forced to farm to produce food for herself whenever there are rains as the place is arid and not suitable for farming. She argued that the deceased's estate is administered in secrecy and the two sons of the second house are the only ones aware of the happenings in the estate. She put the Respondents to strict proof on the allegation that a family dispute resolution mechanism with an executive committee was in place. That the dispute regarding allowance was ignored by all the trustees even after meeting them separately to convince them that she needed an increment necessitating her to seek redress in court.

#### **Applicant's Submissions.**

12. The Applicant's submissions are dated 15<sup>th</sup> May 2024. The Applicant submitted that clause 10 of the will dated 30<sup>th</sup> July 2005 made a provision for surviving widows, children below 18 years and the deceased's children in need of help. She argued that the trustees have a duty to adhere to the terms of the trust as was held in *In the matter of GW & another (Minors)* 2016 eKLR and in the case of *Albert Kigera Karume & 2 others v George Ngugi Waireri & 3 others (sued as trustees of the Njenga Karume Trust & another; Grace Njoki Njenga Karume & 7 others (interested parties)* 2020 eKLR.
13. She argued that the estate generates an income of Kshs. 11, 271,000 which the trustees prioritize on building and construction instead of helping needy beneficiaries of the estate.

#### **Respondents Submissions.**

14. The Respondents submissions are dated 23<sup>rd</sup> May 2024. It was their submission that the applicant has not demonstrated how she arrived at a figure of Kshs. 150,000 which is exorbitant. That the applicant seeks to support her daughter who is not a beneficiary of the estate using the estate money. That an application should have been brought under Section 26 for her to claim to be a dependant of the estate.

#### **Analysis And Determination.**

15. The issue for determination is whether the Trustees of the will of the deceased are exercising their mandate in accordance with the wishes of the deceased. The Applicant urges that the Kshs 50000 that has been proposed is not sufficient and that in her estimation the vast estate can comfortably accommodate her proposal of Kshs. 150000.
16. At Clause 10 of the will dated 31<sup>st</sup> July 2005 the deceased provided that;

“I direct that the following commercial properties shall not be sold during the life time of the wives and as long as there are my children who are below the age of 18 years but shall be held by my trustees upon trust for all the beneficiaries named in this will and also for my children who are not named in the will but deserve assistance from time to time and the trustees



shall in their absolute discretion apply the income from the same to assist the beneficiaries or invest in the same in accordance with law relating the administration of estates. The plots are;-

- a. Kiribicho Plot No. 8.
  - b. Murinya Plot No. 15.
  - c. Mikinduri Plot.
  - d. Meru Municipality Block 16 (Kathita)
  - e. Meru Municipality Block 6.
  - f. Shares in Ruguthu House and Tharimaga Rumatho. ( Emphasis Supplied)
17. Quite clearly the Deceased trusted the Trustees to act in the best interest of his estate and of the beneficiaries and balance the competing interests. The Applicant has not presented a breakdown of the Kshs 150000 to enable the court determine whether or not the offer of Kshs 50000 is unreasonable.
18. The Trustees are aware that the Applicant supports Charity who has special needs. They have in their deliberations as per minutes submitted considered some support to her on humanitarian needs. This is an acknowledged expense on the part of the Applicant. I note that the Trustees have increased the allowance paid to the Applicant from Kshs 5,000 to the current Kshs 50000
19. It was the intention of the Deceased that the trustees 'assist' beneficiaries. That being so and having regard to the evidence on the other demands to the estate income I think that a monthly income of Kshs 65000 should be sufficient to cushion the Applicant. The same is payable for her life time. This support will be in addition to the direct support that is given to the Applicant. This monthly income will be reviewed upward annually by 5% effective January 2025.
20. This being a family matter there will be no order as to costs.

**SIGNED, DATED AND DELIVERED VIRTUALLY IN NAIROBI ON 26<sup>TH</sup> DAY OF JULY, 2024.**

**P M NYAUNDI**

**HIGH COURT JUDGE**

In the presence of:

Fardosa Court Assistant

