



REPUBLIC OF KENYA



In re Estate of the Late Humphrey Rubia Ng'ang'a (Deceased) (Succession Cause 917 of 2008) [2024] KEHC 10369 (KLR) (Family) (23 August 2024) (Ruling)

Neutral citation: [2024] KEHC 10369 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

FAMILY

SUCCESSION CAUSE 917 OF 2008

SN RIECHI, J

AUGUST 23, 2024

IN THE MATTER OF ESTATE OF THE LATE HUMPHREY RUBIA NG'ANG'A (DECEASED)

BETWEEN

CATHERINE WANJIRU NG'ANG'A 1ST APPLICANT

AGNES MWIRIGI NG'ANG'A 2ND APPLICANT

SAMMY MWIRIGI NG'ANG'A 3RD APPLICANT

AND

NANCY WAMORO NG'ANG'A 1ST RESPONDENT

ALAN RUBIA NG'ANG'A 2ND RESPONDENT

RULING

- 1 The deceased Humphrey Rubia Ng'ang'a died intestate on September 19, 2009. The deceased was survived by:
 - i. Nancy Wamoro Ng'ang'a (widow)
 - ii. Agnes Muthoni Ng'ang'a (daughter)
 - iii. Alan Rubia Ng'ang'a (son)
 - iv. Sammy Mwirigi Ng'ang'a (son)
 - v. Catherine Wanjiru Ng'anga (daughter)
- 2 Upon presentation of the confirmation of grant for transmission by the administrators, the County Government of Nairobi required that the administrators first comply with the following conditions:



- i. Application for water supply to each subplot to be made to the General Manager Nairobi City Water & Sewerage Company) and his condition for such supply be met.
- ii. The proposed cul-de-sac road serving the development to be constructed to adoptive standards including surface water drainage and street lightings plans and specifications to be submitted for approval by the City Engineer.
- iii. Vehicular access to subplots A, B & C to be from 12m co-de-sac road and to be sited and constructed to the satisfaction of the City Engineer.
- iv. Vehicular plot entrance to 20m road will not be permitted,
- v. 6x6 metre truncations to be provided at the junction with 20 m road.
- vi. A comprehensive surface water drainage scheme to be submitted and implemented to the satisfaction of the City Engineer.
- vii. Area of land coloured blue on the deposited plan to be surrendered to the Government free of cost.
- viii. Road alignment and surrender to be effected on the ground as per the approved subdivision scheme and in alignment with adjacent plots.
- ix. Survey plan showing surrender approved the director of survey to be attached before final approval.
- x. Construction of any building or boundary wall/hedge should not encroach on to road reserve.
- xi. Subject to the plot not constituting part of the disputed public/private utility land/allocation.

3 On these issues by ruling dated 5th March, 2020, Aroni J, directed:

- (a) The estimates the likely average cost of the road construction from presentations of the parties at Kshs.20,000,000 and apportions on pro rata basis to be paid by all the 5 parties a sum of Kshs.4,000,000 each.
- (b) An interest earning account be opened in the names of the three law firms on record for the parties and the Applicant do deposit Kshs.4,000,000/= being his estimated share of the road construction.
- (c) Upon payment of the said amount of Kshs.4,000,000/- the Administrators will sign within 14 days of such payment the relevant documents for transfer and avail all other necessary documents to facilitate transfer of the Applicant's portion to his name or his nominee.
- (d) Upon further tabulation of costs herein the sum Kshs.2,143,500/= being the cost of subdivision or a sum to be agreed upon will be shared on pro rata basis amongst the beneficiaries and a refund made to the applicant.
- (e) Any other cost incurred for purposes of the said subdivision will likewise be shared on pro rata basis.

4 Five years since the ruling of Aroni J, the directions have not been complied with nor has transmission been completed. When the matter came before this court, 15th April, 2024 and upon hearing the



counsel for the parties, this court tasked Mr. Chege Advocate to convene a meeting of the parties and resolve the outstanding issues hindering transmission.

"This matter came up before the Honourable Court on 20th May, 2024 for mention to confirm compliance whether parties had reached a settlement, where it was confirmed that parties were unable to reach an impasse and upon deliberations, the court issued the following directions:-

- a. That the court shall first deal with issue of the road.
- b. That parties to file their respective submissions on the same.
- c. That the applicant are allowed to file a further affidavit.
- d. Ruling to be delivered on 30th July, 2024."

5 Both parties complied and filed written submission. Mureka and Co. Advocates for the applicant filed submissions dated 24th June, 2024. Amolo & Gacoka Advocates for 1st respondent filed submissions dated 26th June 2024.

6 Mr. Mureka for the applicants submitted that the issue of access road was addressed by Aroni J who issued directions and that unless the directions are complied with the access road will never be constructed. The ruling, ordered for Kshs.20,000,000/- to be deposited in a joint account. Only Kshs.12,000,000/- has been deposited. Kshs.8,000,000/- has not been deposited and requiring the administrators to bypass the ruling as proposed by the Respondents will be unfair.

7 Mr. Amolo for 1st respondent submits that the issue of an access road by the applicant is a red-herring and that transmission is not a typical transfer. He submits that even though all the Ksh.20 Million has not been deposited in a joint account. That is no reason why they cannot sign transmission documents to the 1st and 2nd respondents subject to deposit of the Kshs.4,000,000/- as ordered by court.

8 Upon considering the submissions and the record, I find that the issue of access road as a pre-condition for transmission was determined by Aroni J. Her ladyship consequently issued directions as the cost of the project and the financing. Her ladyship directed:

- (a) The estimates the likely average cost of the road construction from presentations of the parties at Kshs.20,000,000 and apportions on pro rata basis to be paid by all the 5 parties a sum of Kshs.4,000,000 each.
- (b) An interest earning account be opened in the names of the three law firms on record for the parties and the Applicant do deposit Kshs.4,000,000/= being his estimated share of the road construction.
- (c) Upon payment of the said amount of Kshs.4,000,000/- the Administrators will sign within 14 days of such payment the relevant documents for transfer and avail all other necessary documents to facilitate transfer of the Applicant's portion to his name or his nominee.
- (d) Upon further tabulation of costs herein the sum Kshs.2,143,500/= being the cost of subdivision or a sum to be agreed upon will be shared on pro rata basis amongst the beneficiaries and a refund made to the applicant.
- (e) Any other cost incurred for purposes of the said subdivision will likewise be shared on pro rata basis.



9 This court noting that the issue had been determined and directions given can only make the following orders: -

1. That the payment by each of the beneficiaries of Ksh.4,000,000/- to the joint Access for construction of the access road by completed with 30 days from today's date.
2. Whoever who does not complete the payment, no transmission documents will be signed by the administrators for distribution of his/her share to him/her.
3. The administrators to move diligently to complete the administration of the estate within 90 days.
4. If the (3) above is not complied with within 90 days, the certificate of confirmation of grant issued will stand revoked on the 91st day; from the date of this ruling.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 23RD DAY OF AUGUST, 2024.

S N RIECHI

JUDGE

