



**In re Estate of James Kigera Ngunga alias James Geoffrey Kigera Ngunga (Deceased)
(Succession Cause E003 of 2023) [2024] KEHC 11993 (KLR) (26 September 2024) (Ruling)**

Neutral citation: [2024] KEHC 11993 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
SUCCESSION CAUSE E003 OF 2023
DKN MAGARE, J
SEPTEMBER 26, 2024**

**IN THE MATTER OF THE ESTATE OF JAMES KIGERA NGUNGA
ALIAS JAMES GEOFFREY KIGERA NGUNGA (DECEASED)**

**IN THE MATTER OF
CATHERINE WAIRIMU KIGERA ADMINISTRATOR**

RULING

1. This ruling is in respect of the Summons dated 4/6/2024 and filed by the Administrator. The said summons sought the following relief:
 - a. The Honourable court be pleased to grant leave to the Administrator to dispose of by way of private treaty the parcels of land known as L.R No. B12/2/2787/XII/40 Nanyuki and L.R No. B4/31/2787/XII/64 Nanyuki and the sale proceeds thereof be applied for the benefit of the beneficiaries of that property.
2. The Summons is supported by the affidavit of the Applicant sworn on 14/6/2024 as follows:
 - a. That the Applicant is the only surviving child of the deceased herein and also Administrator of the estate.
 - b. The Applicant holds half share in the said property for herself and the other half in trust for the beneficiaries of the estate of her late sister Julia Njoki Kigera.
 - c. The sale is necessary to meet the medical and school expenses for the estate of her late sister Julia Njoki Kigera comprising of Elsie Jane Njeri and Marissa Wairimu Njoki.
 - d. The Administrator has already filed application dated 13/12/2023 seeking to authorize the Deputy Registrar of Court to sign all relevant documents on behalf of the deceased beneficiaries Patrick Maina Ndunyu and Gabriel Mithamo Ndunyu.
3. The Applicant did not file any submissions.



Analysis

4. The issue before me for determination is whether the Administrator should be granted leave to dispose of the property she is holding in trust for the minor and the children of the late sister. The children are all minors.

5. Section 82(d) of the *Law of Succession Act* Cap 160 provides for the powers of personal representatives:

“ 82. Powers of personal representatives Personal representatives shall, subject only to any limitation imposed by their grant, have the following powers—

(a) to enforce, by suit or otherwise, all causes of action which, by virtue of any law, survive the deceased or arising out of his death for his personal representative;

(b) to sell or otherwise turn to account, so far as seems necessary or desirable in the execution of their duties, all or any part of the assets vested in them, as they think best:

...

(d) to appropriate, at any time after confirmation of the grant, any of the assets vested in them in the actual condition or state of investment thereof at the time of appropriation in or towards satisfaction of any legacy bequeathed by the deceased or any other interest or share in his estate, whether or not the subject of a continuing trust, as to them may seem just and reasonable to them according to the respective rights of the persons interested in the estate of the deceased, and for that purpose to ascertain and fix (with the assistance of a duly qualified valuer, where necessary) the value of the respective assets and liabilities of such estate, and to make any transfer which may be requisite for giving effect to such appropriation.

6. The reasons given were shaky at best. It is not understandable what the motivation was for filing this application. There was no evidence to support the application. There is no evidence that the children have any other inheritance or anything that will sustain them.

7. In *Re Estate of Barasa Kanenje Many (Deceased) (Succession Cause 263 of 2002) [2020] KEHC 1 (KLR) (30 July 2020) (Ruling)* the Court stated as follows:

“Section 79 of the *Law of Succession Act* should be read together with sections 82 and 83 of the Act, which set out the powers and duties of administrators. Once the assets of the deceased were vested in the administrators, the administrators would then be entitled to exercise the powers conferred upon administrators by section 82, and they were subject to the duties that were imposed by section 83. The powers included powers to enter into contracts with respect to assets of the estate, to sue and be sued with regard to estate assets, among others. Entering into contracts over estate assets would include converting estate assets by way of sale. However, section 82(b)(ii) of the Act outlawed the sale of immovable assets of an estate before the grant had been confirmed. That would mean that any such sale would be unlawful and unenforceable unless it happened with the leave of the court.”



8. The court has perused the medical and school records attached in support of the averments in the Summons application dated 14/6/2024. I find no basis to doubt that the beneficiaries of the estate of Julia Njoki Kigera, that is Elsie Jane Njeri who is said to be schooling at Lukenya Schools in Athi River and Marissa Wairimu Njoki who is schooling at the Bellevue School have incurred and continue to incur medical and school related expenses. The Administrator herself has also incurred medical expenses at the Aga Khan University Hospital, Nairobi.
9. The court notes that the expenses sought to be paid are recurring expenses relating to school fees in respect of the two beneficiaries. The Administrator seeks to dispose of the property known as L.R. No. B12/2/2787/XII/40 Nanyuki and L.R. No. B4/31/2787/XII/64. The Administrator holds half share for herself and the other half is held in trust for the beneficiaries of her late sister. However, the said beneficiaries do not have other shares in the estate of the late James Kigera Ngunga.
10. To this court, the disposal of the shares held by the beneficiaries of Julia Njoki Kigera would mean Elsie Jane Njeri and Marissa Wairimu Njoki will have no share left. There appears to have been an error, in granting the Applicant the share of the estate to hold in trust without a second trustee. This may result in creation of interest in the said parcel of land. The court therefore suspends her trusteeship over land parcel numbers until another person is appointed by this court to hold in trust for the children.
11. Section 41 of the *Law of Succession Act* provides as follows: -

Where reference is made in this Act to the "net intestate estate", or the residue thereof, devolving upon a child or children, the property comprised therein shall be held in trust, in equal shares in the case of more than one child, for all or any of the children of the intestate who attain the age of eighteen years or who, being female, marry under that age, and for all or any of the issue of any child of the intestate who predecease him and who attain that age or so marry, in which case the issue shall take through degrees, in equal shares, the share which their parent would have taken had he not predeceased the intestate.
12. The administratorship of the Applicant is shaky pursuant to Section 58 of the *Law of Succession Act*, which provides as follows: -
 1. Where a continuing trust arises -
 - a) no grant of letters of administration in respect of an intestate estate shall be made to one person alone except where that person is the Public Trustee or a Trust Corporation.
 - (b) no grant of letters of administration with the will annexed shall be made to one person alone except where
 - (i) that person is the Public Trustee or a Trust Corporation; or (ii) in the will the testator has appointed one or more trustees for the continuing trust who are willing and able to act.
 2. Where an application for a grant of letters of administration in respect of an intestate estate is made by one person alone and a continuing trust arises the court shall, subject to section 66, appoint as administrators the applicant and not less than one or more than three persons as proposed by the applicant which failing as chosen by the court of its own motion.
13. The administratrix ought to have had another person or so to act as a co-administrator subject to Section 66 of the *Law of Succession Act*. If, the application is not made by 16/11/2024, the grant herein shall stand revoked.



14. Consequently, I find no merit in the application made. If there are entitlements for the estates of the deceased persons, administrators of those estates shall sign on behalf of the deceased beneficiaries and land shall be registered in the estates of the deceased beneficiaries until succession is carried out in those estates.
15. There are no compelling reasons for sale of the entire estate as regards the two beneficiaries. The reasons given are not sufficient.

Determination

16. In the upshot, I make the following orders:
 - a. The Summons application dated 14/6/2024 lacks merit and is dismissed.
 - b. The Applicant's trusteeship in respect of the two parcels of land, L.R. No. B12/2/2787/XII/40 Nanyuki and L.R. No. B4/31/2787/XII/64 Nanyuki is hereby terminated. The administrator shall immediately apply for another trustee to be appointed with her to enable the court to appoint new trustees.
 - c. Failure to comply with (b) above, the grant issued herein shall stand revoked at the stroke of midnight on 17/11/2024.
 - d. Meanwhile an order is hereby issued barring transfer of the assets to be held in trust until other trustees are appointed and all the minors turn 18 years.
 - e. The file is closed.

DELIVERED, DATED AND SIGNED AT NYERI ON THIS 26TH DAY OF SEPTEMBER, 2024.

Ruling delivered through Microsoft Teams Online Platform.

KIZITO MAGARE

JUDGE

Represented by: -

Isaac W. & Associates Advocates for the Applicant

Court Assistant – Jedidah

