



REPUBLIC OF KENYA



In re Estate of Njenga Kabata (Deceased) (Miscellaneous Succession Cause E056 of 2024) [2024] KEHC 12870 (KLR) (25 October 2024) (Ruling)

Neutral citation: [2024] KEHC 12870 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
MISCELLANEOUS SUCCESSION CAUSE E056 OF 2024
RE ABURILI, J
OCTOBER 25, 2024
IN THE MATTER OF THE ESTATE OF NJENGA KABATA (DECEASED)
AND
IN THE MATTER OF AN APPLICATION BY MARY WANJIKU NJENGA - APPLICANT
((Arising from Kisumu HC Succession Cause No. 98 of 1998))

RULING

1. The Applicant is Mary Wanjiku Njenga. She is the widow and administratrix of the estate of the deceased Njenga Kabata. She was issued with a grant of letters of administration intestate to administer the estate of the late Njenga Kabata on 4th June 1998 which grant was confirmed on 12th June 1998, 8 days later but because of lack of a proper schedule of distribution of the estate property to the individual beneficiaries, the certificate of confirmation of grant was rectified on 8th October 2018, 20 years later.
2. The assets listed in the estate which was subject of Succession Cause no 98 of 1998 at Kisumu High Court comprised Housing Finance Company of Kenya Ltd shares in Account no 8/01397; Land Parcel nos Ndeiya/Makutano/201 and Kisumu/Nyalenda/952.
3. The administratrix is before this court vide application dated 19th June 2024 by way of summons to review grant. She prays that the property Karai/Renguti/354 be included in the estate assets of the deceased Njenga Kabata; that the Land Registrar, Kiambu District removes the administrators of the estate of Peninah Nyambura Kabata who are Abraham Kimani Kabata, David Karu Gikinga and Loise Njeri Nyotu (deceased) and registers Mary Wanjiku Njenga in their place and that the court do proceed to transfer the said property to Joseph Kabata Nyoike.
4. The grounds in support of the summons for review of confirmed grant are that the suit property formed part of the estate of the late Peninah Nyambura Kabate, the mother to the deceased Njenga Kabata and that the latter was a beneficiary of the said estate; that the said land was curved out of Karai/Renguti/79 upon conclusion of succession proceedings but that Njenga Kabata died before the said



property was transferred to him which property, Njenga Kabata had gifted to Joseph Kabata Nyoike during the lifetime of the said Njenga Kabata; and that Joseph Kabata Nyoike already developed the said property. Finally, that all beneficiaries have consented to the mode of distribution.

5. The summons are further supported by the affidavit sworn by the administratrix Mary Wanjiku Njenga. She has annexed a grant of letters of administration intestate in Kiambu Chief Magistrate's Court Succession Cause no 26 of 1993 wherein Abraham Kimani Kabata is the administrator of the estate of Peninah Nyambura Kabata alias Peninah Nyambura who died on 19th July 1993 and certificate of confirmation of that grant dated 22nd April 1994 wherein 0.65 acres of land parcel no Karai/Renguti/79 was distributed to 'Njega' Kabata.
6. According to Ms. Nderitu counsel to the applicant, the deceased Njenga Kabata was given the parcel of land from his late mother's estate and that the said portion now subdivided to read Karai/Renguti/354 was registered in the name of Njenga Kabata before his demise. That submission is far from the truth. The Search certificate annexed for Karai/Renguti/354 shows that the land was registered in the names of Abraham Kimani Kabata, David Karu Gikenga and Loise Njeri Nyotu on 8th August 1009 via RL19. That search certificate is dated 25th August 2014.
7. Njenga Kabata died on 15th February 1997 aged 67 years old long after that succession process and after the said parcel of land was already registered in the names of the three persons *vide* RL 19, as given in the search certificate annexed.
8. It may be true that the deceased may have intended that his share in his late mother's estate be given to Joseph Kabata Nyoike. However, it is absolutely irregular and dishonest of the applicant to use a wrong route to have the said property which is not registered in her late husband's name to be transferred to her name and finally to Joseph Kabata Nyoike.
9. It is a short cut which is a wrong cut and it would smack of fraud if this Court were to enter into that realm of mixing two estates into one.
10. What is clear is that albeit Njenga Kabata was allocated a portion of his later mother's estate property during distribution of the state of his late mother's estate following Succession proceedings in Kiambu Court, that property was never transferred to Njenga Kabata until his death in 1997 yet his mother died in 1994, and after Njenga Kabata died in 1997, no one registered his portion of his mother's estate land into his name. the persons who are registered through RL19 are named therein and therefore this court by all means, has no power to venture into the estate of Peninah Nyamburah to cause transfer of that estate to the estate of Njenga Kabata and onto his son Joseph Nyoike through these proceedings.
11. The applicant herein and her interested son, Joseph Nyoike, can, since she is the administratrix of Njenga Kabata's estate, approach the administrators of the estate of Peninah Nyambura to cause a transfer of the portion allocated to her husband to her or she and all other beneficiaries of the estate of Njenga Kabata consent to that portion of land being transferred to her son Joseph Nyoike but not for this court to ask the administrators of another estate to transfer property in that estate, which is not subject of succession proceedings herein, and not registered in the name of the deceased Njenga Kabata, to his administratrix and or son.
12. I find this summons for review of grant to be mischievous and an abuse of this court process.
13. I find no mistake in the alleged failure to include that property to this succession process to be imaginary as the property thereof was never registered in the name of Njenga Kabata hence it could not have been so included and even now, it is not registered in his name hence it can only be claimed through



a different forum and not attempting to hoodwink this court mischievously to assume jurisdiction which it is devoid of.

14. This court cannot be asked to purport to distribute a fixed asset estate property which is not registered in the name of the deceased intestate.
15. For all the above reasons, I find the summons for review of the grant dated June 19, 2024 devoid of any substance. It is hereby dismissed and this file is hereby closed.
16. This Ruling to be typed and uploaded.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 25TH DAY OF OCTOBER, 2024

R. E. ABURILI

JUDGE

