



REPUBLIC OF KENYA



**In re Estate Jimna Magira Kamithi alias Magira Kamithi (Deceased) (Succession Cause 129 of 2013) [2024] KEHC 16633 (KLR) (19 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 16633 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MURANG'A  
SUCCESSION CAUSE 129 OF 2013  
CW GITHUA, J  
DECEMBER 19, 2024**

**IN THE MATTER OF THE ESTATE OF JIMNA MAGIRA  
KAMITHI ALIAS MAGIRA KAMITHI (DECEASED)**

**BETWEEN**

**MARY WANJIRU KARUNDITU ..... APPLICANT**

**AND**

**BENSON GITAU MAGIRA ..... 1<sup>ST</sup> RESPONDENT**

**TIMOTHY KANAGI MAGIRA ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. The deceased in this cause, the late Jimna Magira Kamithi died intestate on 2<sup>nd</sup> August 2007.  
The applicant, Mary Wanjiru Karindutu is his niece being a daughter of one of his daughters, the late Mrs. Catherine Nyambura Karindutu while the respondents are his sons and the surviving administrators of his Estate. The court record shows that they were appointed as administrators of the deceased's Estate on 16<sup>th</sup> January 2014 together with their late mother, Mrs. Peris Wanjiru Magira who passed away on 6<sup>th</sup> October 2017.
2. On 15<sup>th</sup> March 2019, the applicant, in her capacity as a joint administrator of her mother's Estate, filed a summons for accounts, inventory and information against the respondents, Mr. Benson Gitau Magua and Mr. Timothy Karagi Magira in which she sought the orders replicated hereunder:
  - a. That the 1<sup>st</sup> and 2<sup>nd</sup> respondents do furnish to the Applicant, a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all the dealings therewith up to the date of the account.



- b. That the 1<sup>st</sup> and 2<sup>nd</sup> Respondents do furnish to the Applicant copies of all the bank statements in respect of the income/revenue received from the assets of the estate and also bank accounts in respect of the deceased's bank accounts as of the time of his death.
  - c. That the 1<sup>st</sup> and 2<sup>nd</sup> Respondents do furnish the Applicant copies of leases, schedule of tenants and a rent schedule in respect of the tenants occupying block 11/196, Kangema B13, Mukarara in Kangema and Kangema 9B;
  - d. That the 1<sup>st</sup> Respondent's summons for confirmation of grant dated 16<sup>th</sup> December 2014 be heard by way of viva voce evidence;
  - e. That the respondents do carry out a valuation of the deceased's estate; and
  - f. That the costs of this application be provided for.
3. The summons is predicated on grounds that the respondents have declined to provide information and undisclosed documents to the applicant which disclosure was a condition precedent to distribution of the deceased's Estate; that the respondents are trustees who are obliged to supply the beneficiaries with information and documents relating to the deceased's Estate; that administration of the deceased's Estate is opaque and that the respondents have failed to take necessary steps to ensure timeous distribution of the deceased's Estate in accordance with the law.
  4. The summons is supported by a very lengthy 79 paragraph affidavit sworn by the applicant on 15<sup>th</sup> March 2019. A close scrutiny of the affidavit shows that the depositions therein relate more to the contested summons for confirmation of grant dated 16<sup>th</sup> December 2014 than the instant application. Most of the averments dwell on the applicants view of the manner in which the deceased's Estate should be distributed among his beneficiaries.
  5. As far as the instant application is concerned, the applicant deposed that whereas the 1<sup>st</sup> respondent filed for summons for confirmation of grant on 17<sup>th</sup> December 2014, he did not indicate in his supporting affidavit how the various properties comprising the Estate were to be shared by the deceased's beneficiaries and an inventory of the deceased's assets and liabilities.
  6. In addition, she averred that the deceased's Estate consisted of vast assets of immovable agricultural, commercial and residential properties, monies in banks ad shares in several companies but she did not know the value of shares held in different companies or the amount of money in the deceased's bank accounts.  
  
She contended that all beneficiaries of the deceased and their legal representatives were entitled to receive copies of all Estate documents including bank statements, title deeds and share certificates; that the respondents were under a duty to supply to the court and the beneficiaries a full inventory of the deceased's assets and accounts regarding their administration of the estate under Section 83 of the [Law of Succession Act](#) (hereinafter the Act).
  7. At paragraph 41 and 46 of the supporting affidavit, the applicant conceded that together with other beneficiaries, on 20<sup>th</sup> June 2011 and 30<sup>th</sup> June 2014, they were supplied with copies of title documents of immovable properties in the deceased's Estate, share certificates and related documents which she listed in paragraph 42 and 50 of the affidavit.
  8. Further, the applicant asserted that the deceased's Estate ought to be shared equally amongst his beneficiaries and for this to happen, the assets comprising the Estate should be valued and accounts taken.



9. In affidavits sworn on 3<sup>rd</sup> August 2020 and 11<sup>th</sup> November 2022, the 1<sup>st</sup> respondent supported the application. He averred that though he was a joint administrator of the deceased's Estate, the 2<sup>nd</sup> respondent has not involved him in the management of the Estate as he considered all his suggestions or ideas as unwise and inconsequential; that the 2<sup>nd</sup> respondent turned down his suggestion to open a joint estate account to which all revenue belonging to the Estate would be deposited; that since he has not been allowed to take part in the administration of the Estate, he was not in a position to supply the information that the applicant was seeking.
10. Further, he contended that during her lifetime, his late mother delegated the collection of revenue accruing to the Estate to some beneficiaries which initiated a scramble for the Estate which continued after her demise; that his elder sister Jane Njeri Kanyua was allowed to collect rent from some property in Murang'a which she has continued to collect to date despite the fact that she was not a legal representative of the Estate; that the said Jane Njeri Kanyua (hereinafter Jane) failed to account for the income she had collected since their mother's demise; that Jane and the 2<sup>nd</sup> respondent have been administering the deceased's Estate without involving him and other beneficiaries.
11. The application was contested by the 2<sup>nd</sup> respondent through his replying affidavit sworn on 28<sup>th</sup> September 2022. In the affidavit, the 2<sup>nd</sup> respondent deposed that all properties belonging to the Estate were listed by the petitioner (his late mother) in her petition for grant of letters of administration; that the only properties which were not included since they were then unknown and were discovered much later were a total of 20 ordinary shares held in Kangema Farmlands limited under certificate No's 15112; 15321; 7708; 15999 and 9428.
12. Further, the 2<sup>nd</sup> respondent asserted that after the demise of their mother on 6<sup>th</sup> October 2017, the family met and agreed on how rent belonging to the Estate would be collected and shared among all beneficiaries and this is what has been implemented to date; that the applicant in her supporting affidavit had admitted being aware of documents each beneficiary was supplied with and it was strange that she was now asking for an inventory of assets; that if the applicant and the 1<sup>st</sup> respondent were aware of other properties forming part of the Estate which had not been disclosed, they should bring them on board for distribution.
13. The 2<sup>nd</sup> respondent also deposed that on 27<sup>th</sup> September 2018, the court directed that the contested summons for confirmation of grant will be heard by way of affidavits and directed parties to file their respective submissions; that instead of complying with those directions, the applicant with the help of the 1<sup>st</sup> respondent filed the instant application with the aim of delaying distribution of the deceased's Estate.
14. In response to the 2<sup>nd</sup> respondents affidavit, the applicant swore a further affidavit on 11<sup>th</sup> November 2022. She gave a list of beneficiaries who were collecting rent from different properties belonging to the Estate including Plot B 9 which was not included in the inventory filed together with the petition for grant of letters of administration.  
  
She denied the 2<sup>nd</sup> respondents claim that an agreement had been reached by family members regarding how proceeds of rent from the Estate would be shared by the beneficiaries.
15. Additionally, the applicant insisted that the 2<sup>nd</sup> respondent had not supplied her with an inventory of assets and liabilities of the Estate which was one of his duties as an administrator of the Estate; that some beneficiaries were intermeddling with the Estate by collecting rent from income generating assets in Murang'a, Kangema and Mukarara towns whereas the law only allowed administrators to collect such income which ought to be deposited in an Estate account which the administrators are yet to



open; that this state of affairs has benefitted some beneficiaries who live off the income belonging to the Estate to the detriment of other beneficiaries.

16. Another beneficiary one Jimna Magiira Githara swore an affidavit dated 11<sup>th</sup> November 2022 in support of the application in which he alleged that the 2<sup>nd</sup> respondent's affidavit was false.
17. To counter the averments made by the applicant in her further affidavit and the affidavits sworn by the 1<sup>st</sup> respondent and Jimnah Magira, the 2<sup>nd</sup> respondent swore a supplementary affidavit on 30<sup>th</sup> November 2022. He deposed that most of the survivors of the deceased were settled by the deceased in his lifetime in what is described as the "Estate Farms" and they live together with their families and work for gain in those farms; that it was therefore illogical for the applicant and the 1<sup>st</sup> respondent to expect him to account for what goes on in those farms.
18. He further averred that the commercial property known as B9 was not registered in the deceased's name and all efforts to get supporting documents on the same had not borne any fruits; that the rent collected from the Estate and all other matters related to the Estate had been dealt with in accordance with the agreement reached in a family meeting held on 12<sup>th</sup> March 2018 which the applicant and the 1<sup>st</sup> respondent attended. He attached a copy of minutes of the said meeting to the affidavit marked as annexure TKMI . He asserted that the 1<sup>st</sup> respondent had been receiving rent from Plot B13 Kangema market and has been appropriating it to his personal use, an allegation which the 1st respondent denied.
19. On the same date, that is 30<sup>th</sup> November 2022, the deceased's daughters, Jane Njeri Kanyua and Margaret Wangure Mwariri (Margaret) swore a joint supplementary affidavit opposing the application. They avowed that the application was filed in bad faith with the intention of clogging the succession cause to ensure that the Estate was not distributed.  
  
They accused the 1<sup>st</sup> respondent of wasting the Estate he now purported to protect to the extent that this court had to issue orders against him to preserve the Estate.
20. They agreed with the 2<sup>nd</sup> respondent that all assets belonging to the Estate had been disclosed in the petition for the grant. They deposed that in the family meeting of 12<sup>th</sup> March 2018, the beneficiaries who included the applicant and the 1<sup>st</sup> respondent agreed on how the deceased's Estate would be distributed; that all the daughters of the deceased were authorized to collect rent from a developed property known as Murang'a Municipality Blk 2/196 and Loc. 12/Sub loc 1/Kiangunyi/T584; that the share belonging to the 1<sup>st</sup> applicant's late mother was intact and will be released to her beneficiaries once the court determined how her Estate would be distributed; that the deceased's five sons were settled by the deceased during his lifetime on parcels of land known as "Estate farms" which they continued to farm and occupy; that there was therefore need to distribute the Estate so that each beneficiary received a formal share of his or her entitlement in the Estate. They urged the court to dismiss the application.
21. The application was canvassed by way of written submissions which all the parties duly filed. The submissions were highlighted before me by learned counsel Mr. Ndungu for the applicant, the 1<sup>st</sup> respondent in person and learned counsel Mr Kimunya for the 2<sup>nd</sup> respondent.
22. I have carefully considered the application, the lengthy and multiple affidavits filed by the applicant, the respondents and other beneficiaries in support and in opposition to the application. I have also duly considered the rival written and oral submissions made by learned counsel on record for the parties and the 1<sup>st</sup> respondent.

Having done so, I find that the issue that arises for my determination is whether the orders sought by the applicant were merited.



23. Starting with the prayer that the respondents should furnish the applicant with an accurate inventory of all the assets and liabilities of the Estate as well as a full account of all the dealings therewith up to the date of the account, the starting point is Section 83 of the *Law of Succession Act* which sets out the duties and responsibilities of administrators of Estates.
24. A reading of the above provision shows that apart from gathering assets belonging to an Estate and paying out funeral expenses and debts incurred by the deceased, administrators or personal representatives of a deceased's Estate are required to render accounts to the court at two main stages.
25. The first stage is within six months after grant of letters of administration. Section 83 (e) commands personal representatives to produce to the court a full and accurate inventory of the assets and liabilities of the deceased and to render an account of all their dealings therewith within six months of the grant up to the date of the account.
26. The second stage falls due at the end of administration of the Estate in accordance with Section 83 (g) of the Act which imposes a duty on personal representatives to within six months of confirmation of a grant to produce to the court a full and accurate account of the completed administration.
27. It is noteworthy that the duty to account in the above two stages is imposed by statute and is expected to be performed by personal representatives on their own accord without waiting to be compelled to do so by a court order.

If they however fail to comply with this statutory duty, the court is not powerless. Under Section 83 (h) of the Act, the court can either on its own motion or on application by any interested party order the administrator (s) to produce to the court a full and accurate inventory of the assets and liabilities of the deceased as well as a full and accurate account of all dealings therewith up to the date of the account.

28. In this case, it is not disputed that the administrators of the deceased's Estate who are the two respondents have not filed in court a full and accurate inventory of the assets and liabilities of the Estate since they were appointed on 16<sup>th</sup> January 2014, over ten years ago. The fact that the applicant and other beneficiaries were at some point supplied with copies of titles and other documents related to assets of the Estate as conceded by the applicant in her supporting affidavit did not exonerate them from executing their statutory duty imposed by Section 83 (e) of the Act.
29. From the 2<sup>nd</sup> respondents further affidavit, it is clear that some assets were not included in the inventory of assets and liabilities filed together with the petition for letters of administration of the deceased's Estate since they were by then unknown and were discovered much later.
30. Whereas it is not clear whether these were the properties that the 1<sup>st</sup> respondent has maintained that were left out of the initial list of the inventory of assets of the Estate filed together with the petition for the grant, in the event that they are not, the 1<sup>st</sup> respondent being a joint administrator of the Estate has a duty and an obligation to produce to the court any additional assets of the Estate he was aware of which has so far not been disclosed to the court by either the 2<sup>nd</sup> respondent or their late mother.
31. It is imperative that the court is furnished with a full and accurate inventory of all the assets and liabilities of the Estate to enable it to execute its mandate of fairly distributing the deceased's Estate to his rightful beneficiaries at the appropriate time.

For the same purpose, it is crucial for the court to be appraised of the value of the assets in the Estate including the parcels of land described as the farmlands.

32. Regarding the prayer that the respondents be compelled to render a true and accurate account of their dealings with the Estate to date, it is clear from the material placed before me that the respondents



though being entrusted with the duty of co-administering the Estate have failed to work as a team to ensure that the Estate was effectively managed for the benefit of all the beneficiaries. It is evident that they have instead pulled in different directions with the result that they have not taken charge of the Estate as they should. They have allowed some beneficiaries to collect rent from income generating assets of the Estate pursuant to alleged informal arrangements agreed to in family meetings at the expense of other beneficiaries. This in law amounts to intermeddling with the properties of the deceased as under Section 79 of the Act, all property of a deceased person vests in the deceased's personal representative.

33. Apart from Jane and Margaret who have admitted to collecting rent from Murang'a Municipality Block 2/196 and Loc. 12/sub loc 1/Kiangunyi/T584, there is general confusion regarding which other beneficiary has been collecting rent from what other assets given the accusations and counter accusations from the respondents and other beneficiaries.
34. Given the above scenario, an order directing the respondents to render a full and accurate account of rental income and their dealings with the Estate may not serve any useful purpose for now but going forward, the respondents are directed to work together to take charge of the Estate and to bring order in its management as they will not in future be excused from rendering accounts to the court in accordance with the law.
35. The applicants had also requested me to give directions on disposal of the contested summons for confirmation of grant. As pointed out by the parties, there were directions issued by Hon. Kimondo J on 27<sup>th</sup> September 2018 which are still in force but in the event that there would be need to vary them, I will give fresh directions at an appropriate time after hearing the parties.
36. For all the foregoing reasons, I find merit in the instant summons and under Section 47 of the Act and Rule 73 of the Probate and Administration Rules, I hereby make the following orders;
  - i. That the respondents shall, within the next 60 days, either jointly or severally file and serve a full and accurate inventory of the assets and liabilities of the deceased's Estate including all those assets that may have been discovered after filing of the Petition for grant of letters of administration of the deceased's Estate.
  - ii. That all informal arrangements concerning collection of rent from all income generating assets of the Estate are unlawful and should be discontinued forthwith.
  - iii. That the respondents shall, within the next 30 days, jointly open an Estate account in which all the rental income belonging to the Estate shall henceforth be deposited.
  - iv. Once the Estate account becomes operational, a valuation of all assets of the Estate to be undertaken at the expense of the Estate. The valuation reports to be filed and served on all interested parties on or before a date to be fixed by consent of the parties soon after delivery of this ruling.
37. This being a family matter, I will not make any order as to costs.
38. It is so ordered.

**DATED, SIGNED AND DELIVERED AT MURANG'A THIS 19<sup>TH</sup> DAY OF DECEMBER 2024.**

**HON. C.W. GITHUA**

**JUDGE**

**In the presence of:**



Mr. Ndungu Kuria for the Applicant  
Mr. Kimunya for the 2<sup>nd</sup> Respondent  
Ms. Susan Waiganjo , Court Assistant  
No appearance for the 1st Respondent

