



**In re Estate of John Kihoro Gichogo (Deceased) (Succession Cause 951 of 2014)
[2023] KEHC 3047 (KLR) (Family) (31 January 2023) (Judgment)**

Neutral citation: [2023] KEHC 3047 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 951 OF 2014
EKO OGOLA, J
JANUARY 31, 2023**

BETWEEN

CATERINA MUTHONI MWENDA OBJECTOR

AND

ALFRED MACHARIA KIHORO 1ST PETITIONER

NANCY MUTHONI MACHARIA 2ND PETITIONER

JUDGMENT

1. This matter relates to the estate of John Kihoro Gichogo (hereinafter “the deceased”). As per the proceedings before the court, the deceased had two wives that is Nancy Muthoni Macharia (hereinafter “the 1st respondent”) and Caterina Muthoni Mwenda (hereinafter “the applicant”). The 1st respondent petitioned for letters of Grant of Administration without including the family of the applicant. The respondent was issued the Grant for Letters of Administration. The applicant sought for revocation of the grant. The court revoked the earlier grant and directed that the grant of letters of Administration be issued to the two widows as co-administrators.
2. Pursuant to the said order, the Co-administrators petitioned and were issued with a Grant of letters of Administration dated March 22, 2016. Subsequently the applicant made an Application dated 10th April, 2017 and filed on April 11, 2017. The Application sought the following orders: -
 1. That the grant of letters of administration intestate issued to the said Nancy Muthoni Macharia and Caterina Muthoni Mwenda in this matter on 22nd day of March 2016 be confirmed.
 2. That the costs be in the Application.
3. The applicant listed the following as the children beneficiaries of the estate of the deceased.



Alfred Macharia Kihoro
Erick Gochogo Kihoro
Shelmith Wangechi Kihoro
Naomi Wambui Kihoro
Rose Daisy Mukami Kihoro
Samuel Gichogo Kihoro
David Victor Kihoro

4. The properties of the deceased's estate were listed as follows: -
Group Life Insurance in NHIF of Kshs. 350,000/-
Shares in Harambee Sacco of Kshs. 210,506/-
Kshs. 1,707,155/80 with public trustee- Nyeri
Inheritance rights and interest in Nyandarua/Silibwet/756 as the only child of Shelmith Wangechi Gichogo
5. According to the applicant, by the time the deceased died, property Nyandarua/Silibwet/756 was in the name of the deceased's mother Shelmith Wangechi Gichogo and the 1st respondent secretly transferred it to her name.
6. The applicant stated that the 1st respondent had already collected Ksh. 350,000/- from NHIF and Kshs. 210,506 from Harambee Sacco. The applicant further stated that her share of Kshs. 280,253 should be deducted from the 1st respondent's share with the public trustee making the applicant's share to be Kshs. 1,133,830.9/- and the respondent's shares to be Kshs. 573,324.9/-
7. The respondents filed an Affidavit of protest against confirmation of Grant. The same is dated 2nd October, 2018.
8. The respondents opposed the mode of distribution of the properties claiming it was not based on a true representation of the deceased's estate; that property LR NO. Nyandarua/Silibwet/756 is listed erroneously in the estate of the deceased yet it belongs to the 1st respondent. According to the 1st respondent the property was gifted to her by the mother-in-law Shelmith Wangechi Gichogo.
9. The 1st respondent contended that the deceased did not have any inheritance rights in Property LR NO. Nyandarua/Silibwet/756; that the deceased was not the only child of Shelmith Wangechi Gichogo as alleged by the applicant.
10. The 1st respondent was agreeable to the payments made in favor of the deceased as listed by the applicant but contested the mode of sharing stating it did not take into consideration medical and funeral expenses. incurred.
11. The parties were later able to come up with a consent which was adopted as Certificate of Partial Confirmation of Grant. The only Property that remained unshared was property LR NO. Nyandarua/Silibwet/756.
12. The issue of the said property was heard through viva-voce evidence. Objector Witness 1 (OW 1) was Nancy Muthoni Macharia. With regard to the property in question, she testified that it was given to her by her mother-in-law Shelmith Wangechi Gichogo in 1995; that the land was gifted to her because



- she was taking care of her mother-in-law when she was sick. She stated that she transferred the property to herself in 2013. That the property did not belong to her deceased husband.
13. On Cross-Examination OW1 stated that the Mother-in-law did not know how to write but she sub-divided the land. She stated that the mother-in-law died in 1995 but they did not petition her estate. OW1 had the title deed and she transferred the land to herself. She stated that her husband died in 2013 and that was when she changed the title deed of the said property.
 14. OW2 was Joseph Mwaura Gichogo. He testified that he is a brother to the deceased. With regard to the property in question he stated that his mother Shelmith gave it to himself and to OW1.
 15. On Cross-examination the witness stated that the mother gave him the title deed and a signed consent; that the mother died before the title was changed. He stated that the property was sub-divided and the mother gave signed consent forms to OW1, OW2 and a buyer.
 16. AW1 was Caterina Muthoni Mwenda. She testified that she was a wife to the deceased since October, 1991; that the land in question should be shared equally. She stated that she did a search on the land in 2013 and it was in the name of Shelmith Gachogo. That when she did a second search, it was in the name of OW1. AW1 placed a caution on the land. AW1 testified that the deceased had told her that the land had been given to him by his mother Shelmith Gachogo in 1992.
 17. On Cross-examination AW1 testified that the deceased died before transferring his portion of the subject land to himself.

Determination

18. Having considered the Application for Confirmation of Grant, the Affidavit in protest, the oral hearing and the submissions before this court, the only issue to be determined is whether property LR NO. Nyandarua/Silibwet/756 forms part of the estate of the deceased.
19. The parties herein have argued and tried to prove their case on the ownership of the subject property. The applicant has argued that the subject land belongs to the estate of the deceased since it was gifted to him by his mother. Together with her Affidavit in support of the Application for confirmation of Grant, the applicant attached a copy of a green card marked “C”. The green card shows entries of proprietors of the subject land. In 1993, the land was owned by Shelmith Wangeshi Gichogo. In 2013 the land was owned by Nancy Muthoni Macharia. In 2016, the applicant placed caution on the subject land.
20. The respondents have argued that the land was gifted to them by Shelmith Wangeci. Even so only Shelmith Wangeci’s and the 1st respondent’s names appear on the green card. There is substantial contention as to the ownership of the subject land.
21. *In Re Estate of Mbai Wainaina (Deceased)* [2015] eKLR, Musyoka J held that;

“The mandate of the probate court under the *Law of Succession Act* is limited. It does not extend to determining issues of ownership of property and declaration of trusts. It is not a matter of the probate court being incompetent to deal with such issues but rather the provisions of the *Law of Succession Act* and the relevant subsidiary legislation do not provide a convenient mechanism for determination of such issues. A party who wishes to have such matters resolved ought to file a substantive suit to be determined by the Environment and Land Court.”



22. There is no document present indicating that the deceased was a proprietor of the subject land at any particular time. The determination of the issue of who truly owned or owns the subject land is reserved to the Environment and Land Court. The duty of this court is to divide the estate of the deceased among his beneficiaries and right now the subject property LR NO. Nyandarua/Silibwet/756 does not form part of the deceased's estate and hence this property cannot be divided among the deceased's beneficiaries.
23. This means that the deceased estate herein has been properly distributed and there are no further outstanding issues. This file is therefore closed.
24. Parties to bear own costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 31ST DAY OF JANUARY 2023.

E.K. OGOLA

JUDGE

Judgment read and delivered online in the presence of:

Mr. Otenyo for the applicant

Mr. Litunda for the respondents

Ms. Gisiele Court Assistant

