



**In re Estate of the Late Gabriel Mbuna M'Mugambi (Deceased) (Miscellaneous Succession Cause 29 of 2016) [2023] KEHC 135 (KLR) (19 January 2023) (Ruling)**

Neutral citation: [2023] KEHC 135 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT CHUKA  
MISCELLANEOUS SUCCESSION CAUSE 29 OF 2016  
LW GITARI, J  
JANUARY 19, 2023**

**BETWEEN**

**CHRISTINA KARIMI ..... APPLICANT**

**AND**

**MURITHI MBUNA ..... RESPONDENT**

**RULING**

1. The administratrix/applicant herein moved this court *vide* summons for confirmation of grant dated September 20, 2022. She sought for orders that:
  - a. The grant of letters of administration made to Christina Karimi Njeru on May 11, 2017 be confirmed.
  - b. The estate of the deceased be distributed as per paragraph 6 of the supporting affidavit.
  - c. Costs of the application be in cause.
2. The application is supported by the affidavit of the applicant, Christina Karimi Njeru sworn on September 20, 2022 and is premised on the ground that it is now over six (6) months since the temporary grant was given. She has listed the following as the deceased's dependants:
  - a. Christina Karimi Njeru – Wife
  - b. Nicholas Kaburu Kaburiere – Son
  - c. James Mwiti Gabriel – Son
  - d. Nkonge Kaburiere – Son
  - e. Mbae Kaburiere – Son
  - f. M'Murithi Mbuna – Brother



g. Polycena Mukwairu Nkonge - Daughter

At paragraph 6 of the said affidavit, she proposes that the estate of the deceased be distributed as follows:

Land Parcel No Muthambi/Lower Karimba/922

- i. Christina Karimi Njeru – 0.30 Acres
- ii. Nicholas Kaburu Kaburiere – 0.75 Acres
- iii. James Mwiti – 0.75 Acres
- iv. Polycena Mukwairu Nkonge – 0.30 Acres
  - a. Land Parcel No Muthambi/Lower Karimba/721
    - i. Christina Karimi Njeru – 0.10 Acres
    - i. Land Parcel No Muthambi/Lower Karimba/44
      - i. Nkonge Kaburiere – 0.75 Acres
      - ii. Mbae Kaburiere – 0.75 Acres
      - iii. M’Muriithi Mbuna – 1.5 Acres

3. In response to the said application, the respondent herein filed a replying affidavit which he swore on September 29, 2022. He deposes that he appreciates the 1 ½ portion of the deceased’s estate in the land parcel Muthambi/L Karimba/44 which the applicant proposes to be granted to the respondent. He however alleges that he lives on land parcel number Muthambi/Lower Karimba/922 with his family since time immemorial and thus expressed concerns that he will be evicted from the land if the proposed mode of distribution by the applicant is implemented and that this would consequently cause him irreparable harm. He thus prays to be awarded only 0.20 acres in parcel number Muthambi/Lower Karimba/922 where his homestead lies.

4. I have considered the application for confirmation of grant dated September 20, 2022 as well as the affidavits in support and response to the said application.

5. The law on confirmation of grants is section 71 of the *Law of Succession Act* (the “act”). Section 71(1) of the *act* provides as follows:

“After the expiration of a period of six months, or such shorter period as the court may direct under subsection (3), from the date of any grant of representation, the holder thereof shall apply to the court for confirmation of the grant in order to empower the distribution of any capital assets.”

6. It follows that the main issue for determination by this court is whether the grant issued to the administratrix on May 11, 2017 should be confirmed as proposed and if, so how the estate of the deceased should be distributed.

7. The identity of the dependants of the deceased is not in dispute. They include:

- a. Christina Karimi Njeru – Wife
- b. Nicholas Kaburu Kaburiere – Son



- c. James Mwiti Gabriel – Son
  - d. Nkonge Kaburiere – Son
  - e. Mbae Kaburiere – Son
  - f. M’Murithi Mbuna – Brother
  - g. Polycena Mukwairu Nkong’e - Daughter
8. The respondent is the deceased’s brother and his claim is for 0.20 acres in parcel number Muthambi/Lower Karimba/922. This issue was previously raised by the respondent in his protest against the previous application for confirmation of grant that is dated January 31, 2020. A determination of the said previous application was made by this court in its judgment that was delivered on August 2, 2022. The court held as follows:
- “With regard to parcel No 922, the claim is based on trust which the protestor needed to prove. This court is a probate and administration court whose jurisdiction is spelt out on the pre-ambule to the Law of Succession Act. In short the mandate of the court is to deal with intestate and testamentary succession and the administration of the estates of the deceased persons, dying after the commencement of the act. A claim based on trust cannot be determined in a Probate and Administration Court.”
9. The aforesaid judgment still stands as no appeal has been preferred against it. The Supreme Court of Kenya in Election Petitions Nos 3, 4 & 5 Raila Odinga & Others v IEBC & Others [2013] eKLR cited with approval an excerpt from an article by Daniel Malan Pretorius, in “The Origins of the Functus Officio Doctrine, with Specific Reference to its Application in Administrative Law,” (2005) 122 SALJ 832 which states:
- “The *functus officio* doctrine is one of the mechanisms by means of which the law gives expression to the principle of finality. According to this doctrine, a person who is vested with adjudicative or decision-making powers may, as a general rule, exercise those powers only once in relation to the same matter.... The [principle] is that once such a decision has been given, it is (subject to any right of appeal to a superior body or functionary) final and conclusive. Such a decision cannot be revoked or varied by the decision-maker.”
10. Guided by the above authority it is my view that this court is now functus officio so far as the respondent’s claim of a share in parcel No 922 based on trust is concerned. Furthermore the respondent has not indicated whether he wants to forego the share 1 ½ acres which applicant wants to give from land parcel No Muthambi/Lower Karima/44
11. The respondent’s claim was also determined by Justice Limo in his ruling dated May 11, 2021 where he stated that the respondent did not adduce evidence to support his claim that the deceased held the land in dispute in trust. I did mention in my judgment dated August 2, 2022 that the ruling by Justice Limo is still “in situ” as there was no appeal. The respondent is urging the court to consider that the mode of distribution will mean that he will have to be evicted from the place where he has known as his home from time immemorial. The record shows that at the time of the hearing of the protest by the respondent, he clearly stated that he was given land measuring 1 ½ acres out of land parcel No Muthambi/Karima/44, he got a title deed and was satisfied. The claim for an additional 0.20 acres from land parcel No Muthambi/Lower Karima/922 is therefore an afterthought which this court cannot



entertain. The court has ruled that the respondent has no claim over this land parcel. The court lacks jurisdiction to entertain the respondent's claim.

12. On the issue of distribution of the estate, there is no pending protest to the proposed mode of distribution. The applicant has made provision for all the dependants. Section 71 (2) (a) of the Law of Succession Act provides as follows: -

- (2) Subject to subsection (2A), the court to which application is made, or to which any dispute in respect thereof is referred, may-
  - (a) if it is satisfied that the grant was rightly made to the applicant, and that he is administering, and will administer, the estate according to law, confirm the grant;

13. I find that there is no hindrance to the confirmation of grant. It follows that the application has merits. I allow it and order that the grant of letters of administration issued to Christina Karimi Njeru on May 11, 2017 is hereby confirmed. The estate of the deceased shall be distributed as per paragraph six (6) of the applicants affidavit that is to say above:-

**a. Land Parcel No Muthambi/Lower Karimba/ 922**

- i. Christina Karimi Njeru – 0.30 Acres
- ii. Nicholas Kaburu Kaburiere – 0.75 Acres
- iii. James Mwiti – 0.75 Acres
- iv. Polycena Mukwairu Nkonge – 0.30 Acres

**b. Land Parcel No Muthambi/Lower Karimba/ 721**

- i. Christina Karimi Njeru – 0.10 Acres

**c. Land Parcel No Muthambi/Lower Karimba/ 44**

- i. Nkonge Kaburiere – 0.75 Acres
- ii. Mbae Kaburiere – 0.75 Acres
- iii. M'Muriithi Mbuna – 1.5 Acres

I make no orders as to costs.

**DATED, SIGNED AND DELIVERED AT CHUKA THIS 19TH DAY OF JANUARY 2023.**

**L W GITARI**

**JUDGE**

