



REPUBLIC OF KENYA



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**In re Estate of Mbugua Mwaniki (Deceased) (Civil Appeal
E008 of 2020) [2023] KEHC 2903 (KLR) (30 March 2023) (Judgment)**

Neutral citation: [2023] KEHC 2903 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CIVIL APPEAL E008 OF 2020
RB NGETICH, J
MARCH 30, 2023**

BETWEEN

LUCY WANJIKU MBUGUA APPELLANT

AND

ANGELINA NJOKI MBUGUA RESPONDENT

*(an appeal from the Ruling of the Chief Magistrate Court at Thika
in Succession Cause No. 408 of 2007 in respect to the estate of Mbugua
Mwaniki, delivered on 27th October 2020 by Hon J. M. Nang'ea)*

JUDGMENT

Background

1. This is an appeal from the ruling of the Chief Magistrate Court at Thika in succession cause No 408 of 2007 in respect to the estate of Mbugua Mwaniki, delivered on October 27, 2020 by Hon J. M Nang'ea.
2. A petition for grant of letters of administration intestates in respect to the estate of Mbugua Mwaniki was filed by Ajelina Njoki Mbugua and Lucy Wanjiku Mbugua on November 24, 2008, the grant was confirmed on February 9, 2009.
3. The court ordered that property known as Loc 1/Rwegetha/546, Loc 1/ Rwegetha 548, Loc 1/ Rwegetha 547, Loc 1/ Rwegetha 549 be held in trust by Ajeline Njoki Mbugua, Lucy Wanjiku Mbugua and Stephen Kagai Mbugua for the other beneficiaries in equal shares.
4. Thereafter the appellant filed the chamber summons application dated September 6, 2019 which is the subject of this appeal. The chamber summons dated September 6, 2019 sought to have the court direct the executive officer to sign the transfer documents with respect to LR Loc 1 Rwegetha/546, LR Loc 1 Rwegetha/548, the production of the identity card, pin certificate, passport photos and the original title deed to be dispensed with.



5. The trial court in its ruling directed the respondent to execute the necessary transfer documents relating to the land parcel LR Loc 1 Rwegetha/546 within 14 days from the date of the ruling failure to which the court administrator was authorized to sign the transfer.
6. The appellant being aggrieved by the said ruling filed the memorandum of appeal dated November 20, 2020 citing the following grounds:
 - i. That the learned trial magistrate erred in law and in fact in delivering a ruling that did not establish whether the applicant's application was allowed or dismissed.
 - ii. That the learned trial magistrate erred in law and in fact in failing to appreciate that there was only one certified copy of the confirmed grant.
 - iii. That the learned honourable magistrate erred in law and in fact in purporting to issue orders giving beneficiaries what the confirmed grant did not give them.
 - iv. That the learned honourable magistrate erred in law and in fact by failing to consider the supporting affidavit to the application dated September 6, 2019 as well as the submissions on such behalf in arriving at his decision.
 - v. That the learned honourable magistrate erred in law and its application to facts having found that there was only one confirmed grant on record and proceeded to disregard it.
 - vi. That the learned honourable magistrate erred in law and in fact in failing to appreciate that even the grant purported to be relied on by the respondent did not award LR Loc 1 Rwegetha/546 to three (3) people.
 - vii. That the learned honourable magistrate erred in law and in fact in failing to determine the fact of the applicant's property LR Loc 1 Rwegetha/548.
 - viii. That the learned honourable magistrate erred in law and in fact in failing to strike out the affidavit of the respondent who admit being senile.
 - ix. That the learned trial magistrate erred in law and in fact in failing to find the activities of the respondent suspicious, who filed an application for revocation of the grant, served it on the applicant, took directions for the two applications to be heard together and submissions on the same filed on January 16, 2020 then the subject application disappeared from the court record.
 - x. That the learned honourable magistrate erred in law and in fact failing to appreciate that the impugned confirmed grant in the respondent's replying affidavit was at odds with the proposed rectification in the application dated November 29, 2019, which disappeared from the court records.
 - xi. That the totality of the decision by the learned trial magistrate was the injudicious interpretation of the law, failure to consider particular issues and arrival at the gross error of the law and injustice to the appellant.
7. The appellant urged the court to vacate and /or set aside the ruling of October 27, 2020, and proceed to allow the appellant's application dated September 6, 2019.
8. The appeal was dispensed by way of written submissions, with each party filing their respective submissions.



Appellant's Submissions

9. Counsel for the appellant filed submissions on October 4, 2022 and submitted that the appellant inherited two (2) parcels of land being Loc 1/ Rwegetha 546 and Loc 1/ Rwegetha 548 while the respondent and the other beneficiary each representing a separate house acquired Loc 1/ Rwegetha 547 and Loc 1/ Rwegetha 549.
10. In arguing the appeal, counsel consolidated the grounds of the appeal to the question as to whether the application was merited. Counsel submitted that the appellant indeed demonstrated that the respondent was aimed at frustrating the appellant's acquisition of her title to the property as the respondent failed to sign the transfer form and submitted that the application was merited as when there is an cooperative administrator the court intervenes to give effect to the grant.
11. Counsel further submitted that the court went out of its way to grant orders not sought and apportioned the respondent a parcel of land not distributed to them. Counsel submitted that the proper grant is the one attached to the application dated September 6, 2019 and urged the court to allow the application dated September 6, 2019.

Respondent's Submissions

12. Counsel for the respondent filed submissions on October 11, 2022 and submitted that the certificate of confirmation of grant produced by the appellant is a forgery since as per the summons for confirmation of grant dated November 24, 2008, property Loc 1/ Rwegetha 546 was to be shared jointly between Ajeline Njoki, Lucy Wanjiku and Stephen Kagai.
13. Counsel submitted that the appeal is unmerited and an abuse of the court process and if the orders are granted, the appellant will proceed to evict the respondent from the parcel of land Loc 1/ Rwegetha 546 which is shared by the three (3) families.
14. Counsel further submitted that the appellant has not attached a copy of the impugned ruling and as such the appeal lacks a structural foundation to base any determination and urged this court to dismiss the appeal with costs.

Analysis And Determination

15. I have perused the record of appeal and the submissions by counsels herein. The issue for determination is whether the appeal herein is merited.
16. This appeal invites the court to make an order *inter alia* directing the executive officer to execute the completion/transfer documents on behalf of the respondent who has declined to do so. And upon execution, the property is transmitted to the appellant.
17. I have perused the trial court's file and note that the proper grant is as per the affidavit in support of summons for confirmation of the grant of administration intestate dated November 24, 2008 which proposed the mode of distribution as follows; Loc 1/ Rwegetha 546 – Ajelina Njoki Mbugua, Lucy Wanjiku Mbugua and Stephen Kagai Mbugua to share equally; Loc 1/ Rwegetha 547 Ajelina Njoki Mbugua- sole proprietor; Loc 1/ Rwegetha 548 Lucy Wanjiku Mbugua–sole proprietor; Loc 1/ Rwegetha 549 Stephen Kagai Mbugua, Nathan Mbugua Nyambura and Ringa Mwaniki to share equally, 840 Shares with EABL and 10,600 shares with ICDC - Ajelina Njoki Mbugua, Lucy Wanjiku Mbugua and Stephen Kagai Mbugua to share equally



18. The certificate of grant confirmed on February 9, 2009, stems from the above-stated affidavit. The certificate of confirmed grant attached to the application filed by the appellant confers upon the appellant sole proprietorship of Loc 1/ Rwegetha 546, to the exclusion of all others.
19. It is clear as per the confirmed grant that the parties intended to have the property Loc 1/ Rwegetha 546 shared among then three (3) families in equal shares.
20. Section 83(f) of the Law of Succession Act states that the administrator(s) of a deceased's estate has a duty to distribute the estate to the beneficiaries.
21. Further rule 73 of the Succession Act gives the court inherent powers to make such orders as may be necessary to meet the ends of justice or to prevent abuse of the process of the court.
22. The appellant has not adduced evidence to show that the respondent has refused to sign the requisite transfer document. I do agree with the trial court that the appellant intends to solely acquire the property known as Loc 1/Rwegetha 546 to the exclusion of other beneficiary's contrary to the confirmed grant.
23. The trial court directed the respondent to sign the transfer document within fourteen (14) days;the appellant opined that the prayer was not sought and instead the court ought to have directed the executive officer to sign the transfer document.
24. I note that the respondent in her reply stated that she has not refused to sign the transmission documents but her only issue was that the appellant sought to have the property distributed to herself and disinherit other beneficiaries.
25. For the appellate court to interfere with the decision of the trial court, it must be satisfied that the trial court applied a wrong principle and arrived at a wrong conclusion. That is not the case in respect to this matter. I will therefore not interfere with the trial court's ruling.
26. On argument that the impugned ruling was not attached to this appeal, I note that the impugned ruling is on pages 44 to 47 of the record of appeal; it there follows that the assertion by the respondent that the appeal has no legal foundation does not hold water.From the foregoing, I find the appeal herein lacks merit.
27. **Final Orders:**
 1. This appeal is hereby dismissed.
 2. Each party shall bear their own costs.

JUDGMENT DELIVERED, DATED AND SIGNED VIRTUALLY AT KABARNET

THIS 30TH DAY OF MARCH, 2023

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RACHEL NGETICH

JUDGE

In the presence of

Martin – Court Assistant

No appearance by parties

