



REPUBLIC OF KENYA



In re Estate of Njoroge Gikuni Ngata (Deceased) (Succession Cause 621 of 2009) [2023] KEHC 3195 (KLR) (29 March 2023) (Ruling)

Neutral citation: [2023] KEHC 3195 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
SUCCESSION CAUSE 621 OF 2009
TM MATHEKA, J
MARCH 29, 2023
IN THE MATTER OF THE ESTATE OF NJOROGE GIKUNI
NGATA(DECEASED)**

BETWEEN

TERESIAH WANJIRU 1ST APPLICANT

ELIZABETH WAMBUI GIKUNI 2ND APPLICANT

AND

ELIUD MATHU NJOROGE 1ST RESPONDENT

JOSEPH NJUGUNA NJOROGE 2ND RESPONDENT

RULING

1. The issue for determination is whether the prayers sought in the chamber summons dated September 27, 2022 brought under certificate of urgency pursuant to Sections 47, 84 (e) & 95 (a)(b) of the of the [*Law of Succession Act*](#) can be granted.
2. The Applicants seek orders: -
 1. Spent
 2. That the Honourable Court do substitute the current administrators with Elizabeth Wambui Gikuni and Teresiah Wanjiru.
 3. That the Honourable Court do issue an order for the sum of Ksh 981,788/= held in account no xxxx in the joint names of M/S Nancy Njoroge & Co Advocates and Karanja Mbugua & Co Advocates be released to Mugendi & Associates Licensed Land Surveyors.



4. The balance of Ksh 2,000,000/= from the sale of parcel No Thika Municipality Block 9/1123 be paid to Elizabeth Wambui Gikuni and Teresiah Wanjiru to clear the surveyor's fees of Mugendi & Associates.
 5. That the funds from the sale of the Plot 380 Pangani be deposited in an account to be opened by Elizabeth Wambui Gikuni and Teresiah Wanjiru.
 6. That the District Land Registrar does restore the Original Title No Kampi Ya Moto/menengai/502(mangu)and cancellation of subsequent subdivisions namely 1644-1667,1687,1688,1689 and 1690 and all subsequent subdivisions.
3. With respect to prayer for order No 4 the record shows that the parties, on July 25, 2018 entered into a consent and the Court (A K Ndung'u J) made an order that the property LR Thika Municipality Block 9/1123 be sold by way of private treaty and the money be deposited in the joint account of counsel. This property was sold, and part of the proceeds deposited in account of both counsel, by then BM Nyaribo & Co & DTB Limited. Later the firm of Nyaribo was replaced by the firm of Karanja Mbugua & Co Advocates, whereby both counsel are signatories to account number xxxx.
 4. The position of the applicant is that the sum of Ksh 4,000,000/= was deposited in that account and the following transactions made; -Ksh 700,000/= paid to valuer of the estateKshs 1,000,000/= shared between the familiesKshs 1,100,000/= paid to law firmsBalance Kshs 981,788/=Kshs 150,000/= part payment from sale of plot 380 Pangani
 5. The respondents have purported to start the process of selling LR Thika Municipality Block 9/1123 on the argument that this this court cancelled the sale of all assets of the estate.
 6. However, it is clear from the judgment dated January 14, 2021 that this court only cancelled the sale, transfers of any property pursuant to the Certificate of Confirmation of grant dated 27th October 210. The court record clearly shows that the property in question LR Thika Municipality Block 9/1123 was not part of that order, as its sale and transfer was not through the Certificate of Confirmation of Grant but vide a consent of the parties, approved by the court through its order of July 25, 2018.
 7. The record also shows that the request for the sale of that property was so that the parties could raise money for the valuation of the estate and for legal fees. The court, in approving the sale directed that "A proper account of all expenses on valuation and legal fees be kept." Hence, placing the duty upon the two law firms to run the account for the purposes it was opened and to place before this court the account of that joint account so that the court can know, whether the orders were complied with. It was not intended to be an arm twister by any of the parties.
 8. With respect to prayer 3 and 4, It has been argued by the respondents that they were not involved in the negotiation of the surveyor's fees and have never been supplied with any contract, agreement, mutation forms/plans and therefor are not bound to pay any fees to the surveyor.
 9. The record again speaks for itself, there is a consent filed on March 24, 2022, dated March 19, 2022 signed by counsel for both parties. That consent appoints Mugendi Associates Licenced Surveyors to do survey and demarcate the properties named in the consent, in accordance with the grant. That upon the demarcation beneficiaries to ballot for their respective shares
 10. The consent further states that the funds realized from the sale of LR Thika Municipality Block 9/1123, Githunguri/Githiga/T36, Bahati/Kabatini Block 1/3099 (Ndeffo), Plot 380 Pangani be deposited in the Account xxxx in the joint names of Karanja Mbugua Advocates & Nancy Njoroge Advocates or disbursement to the beneficiaries and payment of legal fees.



11. Clearly, the respondents are not being truthful when they say they had no idea what the survey fees would be, how would they come to court to seek the appointment of a surveyor through a court order without knowing how much it was going to cost the estate? In my assessment that kind of deposition is an indication of recklessness on their part. Why would they seek the appointment of a surveyor, themselves then turn around and start to say they know nothing about that surveyor when they consented to the surveyor's appointment? their argument they cannot pay/be accountable for the surveyors fees, in light of the consent agreement appointing the surveyor is ingenious, and maybe, there could be some truth that they are not intent on distributing the estate.
12. Hence the prayer for orders with respect to the surveyor's fees is tenable and the fees ought to be paid as against the Surveyor's fee note and work done/or work proposed to be done. The respondents arguments are not sustainable.
13. With respect to the balance of the proceeds of the sale of LR Thika Municipality Block 9/1123, and where that money should be deposited, it is my considered view that that money ought to be deposited in the joint account as per the consent order. The consent is clear the money was to be deposited for valuation and legal fees. The advocates were expected to operate the account on that basis. Any difficulties with disbursements ought to be dealt with through a court order. It would not be prudent to have too many accounts for the same estate.If counsel cannot be neutral, with respect to bills of the estate, then the account should be closed upon the appropriate application/consent, and other accounts opened. This is because the estate must be administered and the grant effected within the requisite time.All I am saying is that the surveyor's fees, ought not to be the reason to open a fresh account. Those fees ought to be paid because the surveyors were appointed with the consent of all parties. That takes care of prayer 5 as well.
14. With respect to prayer 6, the same ought to have been issued within the judgment of January 14, 2021, it is not disputed; hence, it is allowed.
15. Regarding the alleged sale of plot Githunguri/Githiga/736, and deposit of the money in the Account of Karanja Mbugua & Co Advocates. No evidence has been placed before me that indeed that has happened. However, should that have happened, it would be in violation of the consent order, adopted as an order of this court on March 31, 2022, that the proceeds of all approved sales to go to the joint account.
16. Any action to the contrary by the administrators would be a violation of their statutory duties and responsibilities and would be the basis for the revocation of the grant that they hold, and could lead to prosecution. The *Law of Succession Act* is not gentle on this one, that is why without concrete proof, eg the sale agreement, the evidence of the transfer of funds, an affidavit by the alleged buyer, all these could go a long way in supporting the allegation, and guiding the hand of this court to making the appropriate orders. In the circumstances the orders sought with respect to this property is not tenable.
17. With respect to the application to substitute the administrators, the issue here is that the current administrators are reluctant to wind up the estate, and my view is that the cure would be to make the applicants co-administrators so that they too can add their energy to the administration of the estate from within. The remaining part is the simplest, the distribution of the estate.
18. If the two current administrators are stuck perhaps getting help from their sisters will help. Hence, since the law allows up to 4 administrators, the two; Elizabeth Gikuni and Teresia Wanjiru be and are hereby appointed co-administrators of the estate of Njoroge Gikuni Ngata. Where there is a gridlock, any two of the administrators can move the court to have the issue resolved.



19. In the final analysis, I have considered the rival affidavits, the submissions and the application is determined in the following terms; -
- a. With respect to prayer (1) the 2 applicants are to become co-administrators of the estate of the deceased. An amended grant to issue accordingly.
 - b. The money's due to Mugendi & Associates surveyors be paid out of the joint account held by the firm of Nancy Njoroge & Karanja Mbugua Advocates.
 - c. The balance of payment for the sale of LR Thika Municipality Block 9/1123 be paid into consented joint account together with any other sale proceeds of the approved assets of the estate. For avoidance of doubt LR Thika Municipality Block 9/1123 was not affected by the orders in the judgment of January 14, 2021.
 - d. The District Land Registrar be and is hereby directed to restore the original Title No Kampi ya Moto/Menengai/502 (Mangu) as all subsequent subdivisions were cancelled pursuant to the judgment of 14th January 2021.
 - e. Each party to bear its own costs.

DATED, SIGNED AND DELIVERED THIS 29TH DAY OF MARCH, 2023.

MUMBUA T. MATHEKA

JUDGE

