



In re Estate of Mary Nyawira Wanjohi (Deceased) (Succession Cause 989 of 2014) [2023] KEHC 2536 (KLR) (28 March 2023) (Ruling)

Neutral citation: [2023] KEHC 2536 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
SUCCESSION CAUSE 989 OF 2014
M MUYA, J
MARCH 28, 2023**

BETWEEN

JOHN MAINA WANJOHI & OTHERS PETITIONER

AND

REAH KIRIGO WANJOHI & OTHERS RESPONDENT

RULING

1. Summons for confirmation of grant dated May 16, 2016 were filed in court on even date.
2. Subsequently, on the 13th day of June 2016, the protestor herein filed an affidavit of protest.
3. He depones that the application for confirmation of grant made by his co-administrator was not made in good faith as the schedule of assets do not disclose all of the deceased's assets as at the time of her death.
4. It is the protestor's contention that his co-administrators schedule of assets has left out two main assets.
 - (a) Nyeri municipality block 1/818 (old No.45)
 - (b) Tetu Kihuyo/389 – ¼ share that these properties form part of the Deceased Estate.
5. It is further contended that the co-administrators demand that she be re-imbursed Kshs 36,250/= being repair charges for motor vehicle registration No.KAE xxxZ is outrageous since she has been using the motor vehicle in question.
6. It is disputed the allegation that Nyeri/Municipality/Block 1/818 (old No.45) was transferred to the Co-administrator and her co-objectors. That Francis Murugu Chege in his affidavit dated August 19, 2014 denies this allegation and depones that the deceased had indicated that she was transferring the above property to herself and her daughters.



7. That Barclays account No.030-xxxxxx Nyeri Branch should be shared equally among the beneficiaries and it be closed thereafter.

Analysis and Conclusion

8. Nyeri Municipality Block 1/818 (old plot No.45) was subjected to litigation in Civil Suit No. 259 of 2014 in Nyeri Chief Magistrates court, wherein the plaintiffs were Leah Kirigo Wanjohi, Jane Wangui Wanjohi and Esther Wanjiru Wanjohi.

The defendants were John W. Wanjohi, Elijah Wanjohi and Wachira Njeru. T/A Anika Commercial Agencies. This suit was heard and determined on April 24, 2020.

9. The Court found that the deceased had transferred the said property to the plaintiffs during her life time.
10. Further that the plaintiffs' used to collect rent from the said property when the deceased was still alive. The Defendants were ordered to render an account of all the rent collected and surrender it to the plaintiffs.
11. There is no evidence to the effect that the defendants had appealed the decision of the Court and hence change of circumstances. As there is none shown to this court, I find that the property Nyeri Municipality 1/818 was properly bequeathed to the deceased daughters during her life time.
12. As regards the property Nyeri/Kihunyo/389. It's the contention of the co-administrator that it was distributed during the life time of the Deceased and that's why it was not included in the Schedule of properties for distribution.
13. This assertion by the co-administrator has not been contested. I find the issue of the property Tetu/Kihunyo/389 does not fall in this Succession Cause as the distribution was done during the Deceased life time. The same applies to the property Nyeri/Municipality Block 1/818.
14. I have noted that the co-administrator has admitted to have been using motor vehicle registration No. KAE xxx Z. She wants a reimbursement of Kshs. 36,250/= before sharing the proceeds of the sale of the vehicle, after being given the first option of buying. I find the repairs were in order but she was the one using the vehicle in question. It would not be fair to ask the other beneficiaries to foot the bill for the repairs. The motor vehicle to be sold and the proceeds to be shared equally among the beneficiaries. Parties to agree on the best purchaser for value.
15. Account No.030-39 Barclays Bank Nyeri. The affidavit in support of the summons for confirmation proposes that 1/3rd of the funds be shared equally amongst the beneficiaries. The Protestors contention is that the whole amount in the account be shared equally.
16. It is the contention by the co-administrator that the said account is a joint one between the deceased and her sisters. It is this courts view that if the account is a joint one as alleged. It is only the portion of the deceased that should be distributed equally among the beneficiaries.
The remaining 2/3rds should go to the other two joint account holders.
The distribution should be as per the court's ruling and or according to the other uncontested properties.

RULING READ, SIGNED AND DELIVERED IN OPEN COURT AT NYERI THIS 28TH DAY OF MARCH, 2023.

HON. JUSTICE MARTIN M. MUYA



JUDGE

In the presence of:

Macharia :PETITIONERS/PROTESTORS

.....RESPONDENTS

Court Assistant: Kinyua

30 days R/A.

HON. JUSTICE MARTIN M. MUYA

JUDGE OF THE HIGH COURT

