



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Samuel Wahome Gatheru (Deceased) (Succession Cause
284 of 1996) [2023] KEHC 18209 (KLR) (25 May 2023) (Ruling)**

Neutral citation: [2023] KEHC 18209 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
SUCCESSION CAUSE 284 OF 1996
FN MUCHEMI, J
MAY 25, 2023**

IN THE MATTER OF THE ESTATE OF SAMUEL WAHOME GATHERU (DECEASED)

BETWEEN

WACHIURI WAHOME APPLICANT

AND

GLADYS WANGUI WAHOME 1ST RESPONDENT

FESTUS GATHERU WAHOME 2ND RESPONDENT

ALICE WANJIRA NJOROGE 3RD RESPONDENT

REGINA WANJA WAHOME 4TH RESPONDENT

JOHN NDURA WAHOME 5TH RESPONDENT

JACKSON KINYORI WAHOME 6TH RESPONDENT

PATRICK MBOGO WAHOME 7TH RESPONDENT

RULING

Brief Facts

1. This application dated January 16, 2023, seeks for orders of extension of time for a duration of thirty (30) days to enable a valuation to be done on LR Kirimukuyu/Kiria/17 for the administrators to apply for confirmation of grant. The applicant further seeks for orders that the Chief of Tumutumumu location Mathira West Sub county of Nyeri do provide security during the valuation exercise and thereafter during the meeting by the beneficiaries as they deliberate on the mode of distribution.
2. In opposition of this application, the respondents filed replying affidavits dated 1st February 2023 sworn by one of the estate administrators Festus Gatheru Wahome and a beneficiary one Patrick Mbogo Wahome.



The Applicant's Case

3. The applicant deposes that valuation is necessary to ascertain the value of the area where the deceased had constructed three farmhouses and undertaken other developments on LR No Kirimukuyu/Kiria/17 so as to ensure a fair and equitable distribution of the estate.
4. The applicant states that the court on December 22, 2022, rendered its ruling giving the administrators to the estate forty five (45) days to apply for confirmation of grant. However, the court immediately after, went on recess thus he was unable to file the instant application sooner. The applicant thus seeks for orders of enlargement of time by 30 days to enable a valuation be carried out on the suit premises and for a family meeting to be held for the beneficiaries to agree on the mode of distribution. The applicant further states that security is much needed while conducting the meeting as there exists extreme hatred and bad blood between the beneficiaries.

The Respondents' Case

5. In his replying affidavit, Patrick Mbogo Wahome, swore an affidavit stating that on 21/1/2023, the family of the deceased held a meeting where they deliberated on how to share the estate. He further states that the applicant herein and Jackson Kinyori Wahome were invited to the meeting, but they failed to attend. The respondent avers that there is no need for valuation of the estate as the beneficiaries who have built the permanent houses on LR No Kirimukuyu/Kiria/17 are known and their share of that land should be carved out so as to accommodate their developments.
6. Festus Gatheru Wahome one of the administrators swore an affidavit to the effect that the allegations of the applicant are baseless for he has refused to co-operate with the other family members. The administrator states that he has invited the applicant and the other beneficiaries to a meeting on two occasions but the applicant and Jackson Kinyori refused to attend the meeting. The administrator further avers that upon refusal by the applicant to attend the meeting, the other beneficiaries including the applicant attended the meeting on 21/1/2023 presided over by their uncle John Ndura and an elder named Kiagu Muriithi.
7. The administrator avers that there is no need to carry out a valuation of the suit premises as the persons who have permanent developments are Gladys Wangui Wahome and Jackson Kinyori Wahome and their developments were done with the consent of their parents before their demise. Moreover, the administrator states that their parents' house was a semi-permanent house which is not worth carrying a valuation on.
8. The administrator deposes that those present in the meeting, agreed that their share in LR Kirimukuyu.kiria/17 should be hived out in such a manner that their developments are accommodated within their portions.
9. The administrator argues that this is yet another tactic by the applicant to delay the finalisation of the matter. He further states that a perusal of the court file will clearly show the various tactics made by the applicant to delay this matter including asking judges to recuse themselves and transferring the matter from one court to another.
10. Parties agreed to dispose the application by way of written submissions.

The Applicant's Submissions

11. The applicant submits that the respondents have attached minutes of an alleged meeting held on January 21, 2023 where they agreed on a mode of distribution but argues that the said minutes do not



reflect situation as it is on the ground. For example Plot No 1 Ngurumo which the beneficiaries agreed to be sold at Kshs 40,000/- in a family meeting held on September 17, 2000. The applicant submits that Kshs 40,000/- was the value of the plot in the year 2000 and thus 23 years later, the value has shot up significantly. The applicant states that although he did not include the said plot in his current application, valuation will need to be done to ascertain the value of the plot. The applicant relies on the cases of the *Estate of Harun Gachiengo Kamau* (2006) eKLR and *Estate of Dorcas Wairimu Riitho* (2021) eKLR and states that the suit property ought to be valued to enable the equal sharing of the property between the beneficiaries.

12. The applicant denies that he was ever invited to any meeting and states that he made attempts to meet with the other two administrators. The applicant also submitted that one of the beneficiaries, John Ndura Wahome passed away on February 11, 2023.

The Respondents' Submissions

13. The respondents rely on the case of *Ngari & 2 others vs Nyiba Muruathiga & 2 others* [2008] eKLR and submit that the application is incompetent as it ought to have been brought vide summons but has been brought vide a Notice of Motion.
14. The respondents submit that litigation must come to an end and that the applicant is using the court to derail the process of distributing the estate. Thus, if the application is allowed, the beneficiaries will add one more year to the 27 years they have had to wait to enjoy the fruits of their father's estate. Moreover, since the 1st, 2nd, 5th and 6th respondents filed for revocation of grant dated May 15, 2013, the applicant has filed back to back applications which have all derailed the conclusion of the matter.
15. The respondents contend that the applicant intends to carry out a valuation exercise that no other administrator or beneficiary is interested in. The applicant never proposed such an activity and further he absconded the attendance of the meeting convened on 21st January 2023 without an apology where he could have given his ideas on conducting valuation. Furthermore, the applicant has not approached the respondents for discussion on the need to conduct valuation of the assets.
16. The respondents argue that if the applicant was not agreeable to the proposed mode of distribution, he would have waited for Summons for Confirmation of grant to be filed for him to file an Affidavit of protest. The respondents further argue that the applicant's reason for filing the instant application is malicious and meant to delay distribution of the estate.
17. The respondents further argue that the valuation sought by the applicant is not necessary as the court directed the parties to agree on the mode of distribution and not to value of the assets. The property is not being sold neither are there any proceeds from the estate that should be distributed among the beneficiaries. Additionally, no liabilities have been reported to require payment by the estate. The respondents state that some of the beneficiaries Gladys Wangui Wahome and Jackson Kinyori Wahome are already settled in LR No Kirimukuyu/KIRIA/17 and have developed their portions with the consent of the deceased during his lifetime. The respondents state that what is important is to distribute the land in a manner that will be agreed upon by all the beneficiaries.

The Law

Whether the application has merit.

18. The respondents argue that the application is incompetent as it was brought under a notice of motion instead of summons pursuant to Rule 49 and 59 of the *Probate & Administration Rules*. The *Constitution* is clear in Article 159 (2)(d) that in exercising judicial authority, the courts shall be



administer justice without undue regard to procedural technicalities. On that basis, this court finds the application properly on record and proceeds to consider its merits.

19. It is important to give a brief background of this cause. It has been in the corridors of justice for over 27 years due to wrangling by siblings who have been filing application after another. This court rendered its decision on December 20, 2022 revoking the grant de bonin non and the grant confirmed on July 21, 2000 to the late widow of the deceased both of which excluded the daughters of the deceased from the estate. The court appointed Gladys Wangui Wahome, Wachiuri Wahome and Festus Gatheru Wahome as the administrators of the estate. The court also directed the administrators jointly or any of them were at liberty to file Summons for Confirmation of grant within 45 days from the date of the ruling. The administrators, Gladys Wangui Wahome and Festus Gatheru Wahome filed a joint application for Summons for Confirmation of grant on January 19, 2023 pursuant to the court's directions. The applicant however filed this application in which he seeks for orders for valuation of LR NoKirimukuyu/Kiria/17 before distribution of the estate is dealt with. He further depones that the family needs to sit down and have a meeting to ascertain how the estate ought to be shred out. The respondents however disagree that there is need for a valuation of the property and state that the application for a meting he refused to attend. The replying affidavit states that the beneficiaries of the estate convened a meeting on January 21, 2023 where they agreed on the mode of distribution of the estate. All the beneficiaries were in attendance except the applicant herein. The proposed mode of distribution is what has been captured on the application for confirmation of grant filed on January 19, 2023. The said mode of distribution was agreed upon by all the beneficiaries save for the applicant.
20. The cases cited by the applicant in support of his case are distinguishable to the facts in this cause. In the case of the *Estate of Dorcas Wairimu Riitbo* (2021) eKLR, a valuation was ordered by the court because the suit property in the estate was to be put up in the market for sale. In the case of *Estate of Harun Gachiengo Kamau* (2006) eKLR the estate comprised of several properties of which had commercial developments which were generating income and the asset was to be divided between two houses.
21. In my considered view, the applicant has not made a case for valuation of the property L.R Kirimukuyu/Kiria/17. Summons for confirmation have already been filed by the respondents who are seven children of the deceased and they have spelt out the preferred mode of distribution. The applicant is at liberty to file a protest if he does not agree with the mode of distribution in the summons.
22. I find no merit in the application dated January 16, 2023 and it is hereby dismissed with costs to the respondents.
23. It is so ordered.

DELIVERED, DATED AND SIGNED AT NYERI THIS 25TH DAY OF MAY, 2023.

F. MUCHEMI

JUDGE

RULING DELIVERED THROUGH VIDEO LINK THIS 25TH DAY OF MAY 2023.

