



In re Estate of Geoffrey Kimani Muchori (Deceased) (Succession Cause 83 of 2000) [2023] KEHC 17729 (KLR) (25 May 2023) (Ruling)

Neutral citation: [2023] KEHC 17729 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KITALE
SUCCESSION CAUSE 83 OF 2000**

AC MRIMA, J

MAY 25, 2023

IN THE MATTER OF: THE ESTATE OF GEOFFREY KIMANI MUCHORI (DECEASED)

BETWEEN

SUSAN WANJIKU KIMANI 1ST APPLICANT

JANE WAMBUI KIMANI 2ND APPLICANT

AND

GEORGE KAMAU KIMANI 1ST RESPONDENT

JAMES MUCHORI KIMANI 2ND RESPONDENT

RULING

Introduction:

1. By a judgment of this Court rendered on May 31, 2018, it was decreed that the estate of the deceased in this matter be shared equally between the two houses.
2. The respective members of the houses were at liberty to agree on the distribution, dealing, management and/or disposal of their respective shares.
3. The Court, therefore, left it open to the parties to deal further.
4. This ruling arises from an attempt by the Applicants herein to deal with the estate in two principal ways. One, by way of sale of some of the properties, and, two, by sub-division and transfer of some other properties. That was vide a Summons dated September 9, 2022.
5. The move was vehemently opposed by the Respondents.



The Summons:

6. The Summons was hinged on Article 159(2)(d) of the *Constitution*, Order 9, Rule 9 of the *Civil Procedure Rules* and Rule 49 of the *Probate and Administration Rules*.
7. The application sought the following orders: -
 1. Spent;
 2. That the following properties be valued and sold and the proceeds of the sale be shared equally among the 18 children of the late Geoffrey Kimani Muchori (deceased): -
 - a. LR No 2116/52 Section 1 Kitale Municipality – Mamboleo Hotel;
 - b. LR No. Kitale Municipality Block 4/323 Laini member Plot;
 - c. Kitale Municipality site and service residential houses;
 - d. Rural urban lodges Mitume Plot – Kitale Municipality.
 3. That this Honorable Court be pleased to order that the Trans Nzoia County Surveyor to visit the parcel of land known as Waitaluk/Kapkoï Block 4/24 measuring approximately 65 acres and subdivide it in the presence of the 18 children of the deceased and/or their representatives into 18 equal portions to enable every child of the deceased get their share of the land;
 4. That this Honorable Court be pleased to order that the Kiambu County Surveyor to visit the parcel of land known as LR No 416 Gatamayo Kagwe Kiambu measuring approximately 20 acres and subdivide it in the presence of the 18 children of the deceased and/or their representatives into 18 equal portions to enable every child of the deceased get their share of the land;
 5. That the costs of the valuation and the said survey be borne by the estate of the deceased;
 6. That the costs of the Application be provided for.
8. The application was supported by the grounds on its face and the joint Affidavit of the Applicants more so the allegation that the Respondents, who are the Administrators of the estate, had failed to execute the judgment of the Court.
9. In opposition, the 1st Respondent swore a Replying Affidavit on his own behalf and on behalf of the 2nd Respondent. He deposed that the Administrators had endeavored to implement the judgment of the Court by taking some positive steps.
10. The Respondents stated that they had since undertaken the following steps: -
 - i. Sub-divided the properties namely LR No Waitaluk/Kapkoï Block 4/24 and LR No 416 Gatamayo Kagwe Kiambu into two equal portions each for the two houses. Survey and subdivision documents were annexed.
 - ii. Through family meetings, it was agreed that the management and operations of the hotel and bar on LR No 2116/52 Section 1 Kitale Municipality (Mambo Leo Hotel) be run by the daughters of the deceased. Further, any income generated be deposited in a common account to be shared later in terms of costs and expenses equally as between the two houses. To that end, the Administrators proceeded to open a joint bank account. To the utter shock and surprise of the Respondents, the Applicants reneged on the family arrangement.



- iii. The residential houses on Kitale Municipality Block 4/323 Laini Member Plot have since been occupied by the daughters of the deceased.
 - iv. The residential houses on Kitale Municipality site and service Plot have all been managed and run by the Applicants and who have been collecting rental income therefrom since 2018.
 - v. The Rural, Urban Lodge Mitume Plot has, since 2018, been managed by the Applicants and they have also collected rental incomes since then.
11. In light of the above, the Respondents deposed that it was the Applicants who were instead impeding the implementation of the judgment.
 12. The Respondents expressed willingness to continually implement the orders of the Court. They opposed the valuation and sale of some of the properties since the two houses had not mutually agreed on such proposal.
 13. The Respondents sought for time to raise funds to divide the properties equally between the two houses in accordance with the judgment.
 14. In a rejoinder, the Applicants filed a Supplementary Affidavit. They deposed that the judgment of the Court allowed them to value the properties, liquidate them and share the proceeds. They thus opined that the assets be shared individually amongst the children and not between the two houses so as to bring an end to distribution.
 15. On the subdivided plots, the Applicants, while acknowledging in the affirmative, they maintained that the Respondents were reaping benefits to the exclusion of the daughters. While conceding that the Mambo Leo Hotel and Bar were run by Nancy Waceke and Rahab Wangare respectively, they added that the Mambo Leo Guest Houses were run by the 1st Respondent.
 16. They lamented that the bar and hotel were not profitable in comparison to Mambo Leo Guest Houses. They further observed that since then, the 1st Respondent had only deposited a sum of Kshs 21,000/= into the joint account.
 17. They also deposed that the land rates for Mambo Leo and Laini Member properties had not been paid. On the five residential houses at site and service, they deposed that the monthly rent per house is Kshs 10,000/= and that two of them were managed by their later brother David Muchori's wife while the rest were managed by all daughters except Nancy Waceke and Rahab Wangare.
 18. They added that the Mitume property was run by their brother John Mburu together with all daughters. They also deposed that most daughters were living in financial difficulties that can only be resolved by distribution of the properties. They pointed out that in fact, their late sister Naomi Ngina passed away because she could not afford medical care.
 19. The Applicants urged this Court to allow their application.
 20. On the Court's directions, the application was disposed of by way of written submissions. Both parties obliged.
 21. The Applicants maintained that the Respondents had been gaining income from the sub-divided properties and urged that the application was merited and ought to be allowed.
 22. The Respondents urged the Court to dismiss the application for lacking merit. They submitted that this Court should not depart from its judgment as proposed by the Applicants. They argued that contrary to the Applicants' assertions, all parties were found to all enjoy the proceeds from



the commercial properties. They submitted that no evidence was furnished to demonstrate that the Applicants were denied possession, use and occupation of the portions assigned.

23. The Respondents submitted that the opening of the joint account was premised on the fact that the commercial properties could not be subdivided. They proposed that if so ordered, the commercial properties be shared out between daughters and sons with each cluster deciding on how they intended to share.
24. The Respondents submitted that they wished to retain the deceased's legacy as the adequate way forward rather than sell the properties. Alternatively, they proposed that a Mediator be appointed to afford the best way forward in this matter.

Analysis:

25. This Court has carefully considered this matter. It is not in dispute that the judgment of the Court has not been impugned by any of the parties. It is also true that from the judgement, the parties were accorded the liberty to agree on the mode of distribution of the properties including valuation and sale, if need be.
26. This Court must commend all the parties, as a family, in their endeavours to discuss and agree on the way forward. It, however, appears that the discussions were not completed to enable the final dealing with the estate.
27. At paragraph 13 of the judgment, this Court stated as follows: -

'In dividing the estate into houses, each house was obligated to determine a formula of sharing within each respective house. Where the beneficiaries have died, their estate be apportioned appropriately. Should the parties whether through their houses or any other arrangements agree to vary the mode of sharing, nothing shall stop them from stating so and filing their memorandum of undertaking, if any. The parties shall equally be at liberty to value the same and liquidate and share the proceeds as they shall deem appropriate.'

28. In the spirit of consensus building, this Court is of the very considered position, and so finds, that it is prudent to accord the parties a guided reconciliatory pathway before it is called upon to deal further, if need be.
29. Consequently, this Court makes the following orders: -
 - a. This matter is hereby referred to mediation.
 - b. The matter will be fixed for directions before the Hon Deputy Registrar of this Court on a date to issue.
 - c. In the event the parties fail to agree on the way forward, this Court will give further orders on the basis of the Summons dated September 9, 2022.

It is so ordered.

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

A. C. MRIMA

JUDGE

Ruling No. 1 delivered virtually in the presence of:

Mr. Bisonga, Learned Counsel for the Applicants.



Mr. Onyancha, Learned Counsel for the Respondents
Regina/Chemutai – Court Assistants.

