



**In re Estate of Njuguna Murwambeti alias Njuguna Muruambeti (Deceased) (Civil Appeal E050 of 2021) [2023] KEHC 19442 (KLR) (27 June 2023) (Judgment)**

Neutral citation: [2023] KEHC 19442 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT EMBU  
CIVIL APPEAL E050 OF 2021  
LM NJUGUNA, J  
JUNE 27, 2023  
IN THE MATTER OF THE ESTATE OF NJUGUNA  
MURWAMBETI ALIAS NJUGUNA MURUAMBETI (DECEASED)**

**BETWEEN**

**ANISIA MARIGU MUNYI ..... 1<sup>ST</sup> APPELLANT  
ERASTUS NYAGA KIVUTI ..... 2<sup>ND</sup> APPELLANT  
DUNCAN NYAGA KIVUTI ..... 3<sup>RD</sup> APPELLANT**

**AND**

**FRANCIS NJIRU KIVUTI ..... 1<sup>ST</sup> RESPONDENT  
JANE NJOKI KIVUTI ..... 2<sup>ND</sup> RESPONDENT  
ROSEMARY WANJA NJERU ..... 3<sup>RD</sup> RESPONDENT  
SAMMY NJUE KIVUTI ..... 4<sup>TH</sup> RESPONDENT**

**JUDGMENT**

1. This appeal was instituted by way of a memorandum of appeal dated November 29, 2021 and wherein the appellants are appealing against the ruling of Hon. Ouko R.M. made and delivered on November 4, 2021 in Runyenjes Senior Principal Magistrate Succession Cause No. 24 of 2020. The grounds of appeal raised by the appellants are enumerated on the face of the memorandum of appeal.
2. The appellants prayed that the appeal be allowed, that orders by the trial court be set aside and the cause be heard afresh or in the alternative, the estate of the deceased be distributed in line with the proposal by the appellants. In addition, that the cost of the appeal be awarded to the appellants.
3. The appellants appeal is hinged on the fact that the trial magistrate failed to appreciate and consider the appellant's protest and further, the fact that the mode of distribution was unfair for the reason



that some of the beneficiaries were to inherit portions of ( Nthawa/Siakago/1365) which land is considered as commercial. In their view, the said considered commercial land ought to be shared by all the beneficiaries equally. That the trial magistrate misdirected herself for assuming that the whole family was in agreement with the mode of distribution as was proposed by the administrator. As a consequence of the alleged misdirection by the trial magistrate, this court was urged to relook at the matter afresh and adopt the appellants' proposal in distributing the estate of the deceased.

4. The parties took directions that the appeal be dispensed with by way of written submissions and which directions were fully complied with.
5. The appellants have submitted that there is nothing presented before this court to prove that they agreed on the mode of distribution of the estate herein and therefore, this court needs to treat the children of the deceased equally. The appellants placed reliance on the case of *Stephene Gitonga M'Murithi v Faith Ngira Murithi* Nyeri Case No 3 of 2015. In a nutshell, the appellants discredited the mode of distribution of the estate herein arguing that, had their protest been heard by the court, their proposal on the mode of distribution could have been best for adoption by the court.
6. The respondents on the other hand submitted that the power to revoke or uphold a grant is discretionary. That in the present case, it is not disputed that the petitioner petitioned for letters of administration and thereafter, filed summons for confirmation of the grant and wherein the 1<sup>st</sup> appellant in disagreeing with the proposed mode of distribution filed a protest. It was the respondents' case that the court during the hearing of the matter directed that the protest be canvassed by way of viva voce evidence, however, the 1<sup>st</sup> appellant failed to turn up in court and further, she voluntarily withdrew the protest after which the trial court confirmed the grant. That the properties in question had been previously sub divided and shared out by the deceased during his lifetime. That for instance, the 1<sup>st</sup> appellant has since leased her portion of the property to a church in order to collect rent; the 2<sup>nd</sup> appellant on the other hand has been making attempts to disinherit one of their siblings claiming that she is married and therefore does not deserve a portion of land from the estate; the 3<sup>rd</sup> appellant during the lifetime of the deceased was gifted a large portion of the estate compared to the rest of the dependants and that the deceased had his reasons for doing so.
7. Further, it was submitted that a party is bound by its pleadings and therefore, cannot be heard to say that she was not heard by the trial court. That it remains unclear what the appellants are seeking before the court.
8. This court being the first appellate court has a duty to revisit the evidence on record, evaluate it and reach its own conclusion in the matter but in doing so, this court ought not to interfere with findings of fact by the trial court unless they were based on no evidence at all, or on a misapprehension of it or the court is shown demonstrably to have acted on wrong principles in reaching the findings. There are innumerable authorities on these two duties which I need not reproduce herein.
9. I have certainly perused and understood the contents of the pleadings before the trial court, proceedings and the ruling therefrom (as summarized above), the grounds of appeal and the rival submissions filed herein. It is clear that the crux of this appeal is the mode of distribution of the estate as was ordered by the trial court and therefore, the main issue for determination is whether the estate was rightly distributed as per the law.
10. I have had a chance to peruse the record and more so the lower court record and I find that the matter herein was filed at Runyenjes as Succession Cause No. 24 of 2020 and wherein the letters of administration was issued to the 1<sup>st</sup> respondent. Later, the appellants registered a caution on the suit land and thereafter, filed a protest dated March 9, 2020. That when the grant was due for confirmation.



The court directed that the petitioner files a replying affidavit and that the matter was to be canvassed by way of oral evidence. I further note that on November 4, 2021, when the matter came up for hearing, the petitioner herein made an application to withdraw the previous petition and the same be replaced with the petition dated July 19, 2021 of which he prayed that the same be confirmed. In the same breadth, the record shows that the protestor equally withdrew her protest and the court noted that there being no objection, the grant was thus confirmed.

11. It is not clear why the protestor withdrew her protest and thereafter moved this court via an appeal; no reason has been presented before this court to show that in deed, the appellants deserve the orders sought herein as no substantial reason has been presented before this court to explain the appellants' action before the trial court. Further, this court ought to have been informed the reasons as to the change of heart in filing the appeal and consequently the orders sought herein when there was a chance to hear the protest but the same was withdrawn by the appellants currently before this court.
12. From the pleadings filed by the appellants, it remains unclear on the cause of action being sought before this court but one thing remains clear that the appellants are not happy with the mode of distribution as was proposed by the petitioner. It is my considered view that the best forum that the same could have been properly thrashed was before the trial court and for the reason that the 1<sup>st</sup> appellant withdrew her protest, this court's hands remain tied.
13. Consequently, I dismiss the appeal herein with no order to costs.
14. It is so ordered.

**DELIVERED, DATED AND SIGNED AT EMBU THIS 27<sup>TH</sup> DAY OF JUNE, 2023.**

**L. NJUGUNA**

**JUDGE**

.....for the Appellants

.....for the Respondents

