



In re Estate of Esther Wanjiku Wainaina (Deceased) (Succession Cause 103 of 2005) [2023] KEHC 19091 (KLR) (26 June 2023) (Ruling)

Neutral citation: [2023] KEHC 19091 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
SUCCESSION CAUSE 103 OF 2005
TA ODERA, J
JUNE 26, 2023
IN THE MATTER OF THE ESTATE OF THE LATE ESTHER
WANJIKU WAINAINA (DECEASED)**

**IN THE MATTER OF
ELIZABETH WANGUI WAINAINA APPLICANT**

RULING

1. The applicant filed application dated February 8, 2023 seeking;
 - a. That the applicant be substituted as an administratrix of the estate of the deceased. In place of John Karanja aka John Wainaina Karanja (deceased) who died on March 3, 2021 before completing the administration of the estate of the deceased and delete his name as a beneficiary of the estate.
 - b. That the grant of letters of administration intestate herein and confirmed grant issued on March 11, 2011 be rectified accordingly to reflect the substituted administratrix and beneficiary to read Moses ole Sandato, Mary Muthoni and Nyunguto and Jackson Irungu Githinji to hold in trust for Makao Self-Help Group.
 - c. That upon substitution the applicant be allowed to distribute the estate of the deceased.
 - d. The cost of the application be in the cause.
2. The application is based on the annexed affidavit of Elizabeth Wangui Wainaina. Who told this court that deceased had sold the plot No 934 Kiambogo to Makao Self Help Group in her life time and during confirmation of the grant herein it devolved to John Karanja Wainaina the deceased administrator who was to transfer the same to the said buyer, but he died on March 3, 2021 before processing the title deed. Also that the buyer has been in possession of the land for over 20 years. She annexed a copy of the death certificate, sale agreement and chiefs letter (EWW1-3).



3. I have carefully perused the application and the file herein. I note that the grant was confirmed on March 11, 2011 and the sale agreement dated December 15, 1998 was between Esther Wanjiku Wainaina and Alfred Githinji Gathenya (EWW2). The said Alfred Gathenya is not involved in this application. I have seen the death certificate of John Karanja Wainaina the administrator herein and I have no doubt that he passed on March 3, 2021.
4. I allow the prayer for substitution of the deceased administrator so that the estate can be administered and distributed. I order that the new administrator to distribute the estate within 6 months from today otherwise the grant will be stand revoked.
5. The representatives of Makao Self Help Group whose nexus to Gathenya has not been established are the proposed beneficiaries of the estate of deceased. The said group is not a liability of the estate of deceased in this cause but John Karanja Wainaina and any claim against John thus ought to be channeled through the estate of the said John is a separate succession cause. I decline to allow the prayer for devolving of the estate to the representatives of Makao Self Help Group as they are strangers to the estate of the deceased herein.

Section 83 (g) of the *Law Of Succession Act* provides that “ personal representatives shall have the following duties-

- (g) within six months from the date of confirmation of the grant, or such longer period as the court may allow, to complete the administration of the estate in respect of all matters other than continuing trusts, and to produce to the court a full and accurate account of the completed administration.
6. I have taken notice that there is a worrying trend in Kenya whereby administrators obtain confirmed grants but do not distribute the estate of the deceased within 6 months as required by law and thus the beneficiaries are forced to come back to court for substitution upon the death of the administrator. There is therefore need for the administrators to distribute the estate within the prescribed timelines to avoid future complications and inconvenience to the beneficiaries. I allow the prayer for substitution of the deceased administrator so that the estate can be administered and distributed.

T. A. ODERA - JUDGE

26/6/2023

RULING DELIVERED VIRTUALLY VIA TEAMS PLATFORM IN THE PRESENCE OF;

Mburu for the Applicant.

