



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re Estate of Alexander Meeme Kajoi (Deceased) (Succession Cause  
E015 of 2021) [2023] KEHC 21808 (KLR) (10 August 2023) (Ruling)**

Neutral citation: [2023] KEHC 21808 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
SUCCESSION CAUSE E015 OF 2021  
EM MURIITHI, J  
AUGUST 10, 2023**

**IN THE MATTER OF**

**EDITH KARIMI MWENDA ..... 1<sup>ST</sup> PETITIONER**

**JANET KANANU MURUNGI ..... 2<sup>ND</sup> PETITIONER**

**RULING**

1. This is a ruling on the final order on distribution of the estate herein, the parties having already concluded a consent as to the distribution of all the other assets save for two plots Plot No 121 and 176 at Githurai, Nairobi both registered in the name of the deceased and which are separately claimed partially and wholly, respectively, by the 1<sup>st</sup> and 2<sup>nd</sup> Petitioner
2. The two plots and the other assets distributed by consent of the party are acknowledged as properties of the deceased. In her testimony before the court the 2<sup>nd</sup> Petitioner who claims both plots indicated that the 1<sup>st</sup> petitioner's proposal that she (2<sup>nd</sup> Petitioner) takes plot 121 and the 1<sup>st</sup> petitioner plot no 176 is not acceptable because plot 176 had been obtained when the 1<sup>st</sup> petitioner had gone to live separately in the United States of America and that plot no. 121 was where the deceased had established a matrimonial home with the 2<sup>nd</sup> petitioner, while the 1<sup>st</sup> Petitioner's matrimonial home with the deceased had been established at Mathare Nairobi. She also claimed to have indirectly contributed to the construction and development of the plots by bringing up the children while the deceased was working.
3. The 2<sup>nd</sup> Petitioner on cross-examination admitted that she had possession of the two plots and was solely benefitting from the rental income from the plots. She described the plot 121 as a house where she lived with

'a first floor and 2<sup>nd</sup> floor. It has rental houses. There are 24 rooms[and] the 1<sup>st</sup> floor is leased out. The 1<sup>st</sup> floor has 10 rooms. I collect rent from the tenants.'



As regards the plot 176 Githurai she said

'the construction has not been completed. It has 5 frontal shops all leased to tenants. The first floor has 4 tenants. The others in the basement and ground floor and parts of 1<sup>st</sup> floor are not occupied. I receive the rent from plots 121 and 176. I use it to educate my children. I have not given any share to the 1<sup>st</sup> Petitioner as my husband never told me to give any share. I do not know that Edith assisted in the construction of plot no. 176 Githurai.'

4. The 1<sup>st</sup> Petitioner testified that contrary to 2<sup>nd</sup> Petitioner's averment that the deceased had established a matrimonial home for the 1<sup>st</sup> petitioner at Mathare Nairobi, and that the plot not 121 was acquired in 1994 before the marriage of the 2<sup>nd</sup> Petitioner after 1999 when she came to work for them as a house help, producing some photograph of the 2<sup>nd</sup> Petitioner with the 1<sup>st</sup> Petitioner's children. She contended that the 2<sup>nd</sup> Petitioner could not have contributed to the construction and development on the plot 121 as she only had a house-help's wages. She produced a sale agreement for plot no 121 and said that she had paid a down payment of Ksh 16,000/- from her shop towards the purchase price, and alleged that they had to sell their car finance the roofing of the house on the plot. She conceded that while her two daughters had initially lived in the 3-bedroomed house on plot no. 121 and the deceased and the 2<sup>nd</sup> Petitioner had lived on first floor of the plot 121, the 2<sup>nd</sup> Petitioner had subsequently moved to the 3 bedroomed house. She further conceded that the plot no. 176 was acquired when she was away in the United States of America and she had agreed to assist her husband but could not tell how much of the money she assisted the deceased through their daughter with was used for the purchase and development of the plot.
5. On the distribution, the 1<sup>st</sup> Petitioner proposed equal treatment that each petitioner gets a plot of the estate as follows:

' The two plots are developed. [The] Consent also shares the estate. The 2<sup>nd</sup> Petitioner seeks the two plots. I claim that she should get one plot while I take the other plot. Both are developed. I would pray for plot 121 which I contributed but since she is living there. I can take 176, as she claims 121 as a matrimonial home. If she prefers 176 I can also take 121. She takes rent for the two plots. She benefits from the whole estate. My children are also in school, the last in master's class. The deceased was helping me in paying school fees. It is not a good ground to say that she has children in school as the estate should also help me pay school and for our upkeep. We should both benefit from the constructed plots for our upkeep.'

## Verdict

6. The Court has considered the question of the proposed distribution of the estate two disputed assets bearing in mind that this is not a matrimonial dispute but succession proceedings governed by the law of succession. The alleged contribution to the acquisition and development of the estate has not been proved by either side to the standard requisite for the court to adjudicate property rights to any of the petitioners. None of the Petitioners claimed to own any of the two assets. Only some form of contribution in the acquisition, construction and development was alleged but in not in sufficient cogency to establish title or interest legal or beneficial in the said assets. The whole estate must be distributed in accordance with the law of intestate succession of the deceased's assets. The baseline of the determination is that the entire estate in issue in these proceedings is the property of the deceased. The 1<sup>st</sup> Petitioner has 2 children and the 2<sup>nd</sup> Petitioner 3 children, and the parties have distributed the entire assets of the estate by consent save for the two constructed plots subject of this ruling. There was



no evidence on the respective value of the two plots and the court must treat them equally valued for purposes of distribution between the two households of the deceased.

7. The evidence on the alleged contribution to the estate only goes here to establish connexion to the particular asset as would assist the court in determination as to which asset should go to which house of the deceased.
8. However, upon considering the evidence of the parties in this petition, the court on a balance of probabilities finds that the 1<sup>st</sup> petitioner assisted in the acquisition, construction and development of the plot no. 176 by direct contribution of money therefore and the 2<sup>nd</sup> petitioner as a housewife also contributed in the development of the plot no 121 where she lived with her husband indirectly through the care and bringing up of heir children while the husband worked. Consequently, the two petitioners are entitled to share the two assets of the deceased in line with their established connexion.
9. In distributing the estate, the court must take cognisance of the portions of the estate already occupied by the two beneficiaries and as much as possible align the distribution to such occupation so as to cause minimal disruption of the parties established settlement and developments on the estate.

## **ORDERS**

10. Accordingly for the reasons et out above, the court finds that the two undistributed plots Nos 121 and 176 Githurai, Nairobi shall be distributed to the Petitioners as follows:
  - i. Plot No 121 Githurai, Nairobi is distributed to the 2<sup>nd</sup> Petitioner, Janet Kananu Murungi
  - ii. Plot No 176 Githurai, Nairobi is distributed to 1<sup>st</sup> Petitioner, Edith Karimi Mwenda.
11. The Deceased's estate shall be distributed, and a certificate of confirmed Grant for the distribution of the estate shall issue forthwith, in terms of the consent of the parties and the order of this court in this ruling.

Order accordingly.

**DATED AND DELIVERED THIS 10<sup>TH</sup> DAY OF AUGUST, 2023.**

**EDWARD M. MURIITHI**

**JUDGE**

**APPEARANCES**

Mr. Mageria for the 1<sup>st</sup> Petitioner.

Mr. K. Kiara for the 2<sup>nd</sup> Petitioner.

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