



REPUBLIC OF KENYA



**In re Estate of Lawrence Kairanya M'mukindia alias M'mukindia M'kairanya (Deceased)
(Succession Cause 2 of 2020) [2023] KEHC 21342 (KLR) (10 August 2023) (Ruling)**

Neutral citation: [2023] KEHC 21342 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
SUCCESSION CAUSE 2 OF 2020
EM MURIITHI, J
AUGUST 10, 2023**

BETWEEN

**ESTHER MUKIRI KAIRANYA 1ST PETITIONER
JOHN KIRIMI KAIRANYA 2ND PETITIONER
JEREMY KAMATHI 3RD PETITIONER
MWENDA JACOB KAIRANYA 4TH PETITIONER**

AND

MARTIN KAIRANYA APPLICANT

AND

**ROSEMARY KANARIO KAIRANYA INTERESTED PARTY
CATHERINE NKATHA MBAYA INTERESTED PARTY
SUSAN MUKUBA KAIRANYA INTERESTED PARTY
JANE KANANU KAIRANYA INTERESTED PARTY
EZRA MUGUNA KAIRANYA INTERESTED PARTY
KAIRANYA INVESTMENTS LTD INTERESTED PARTY
MARY KARIMI KIRIMI INTERESTED PARTY**

RULING

1. This is a ruling on an application by the Applicant and the 1-5 Interested parties through Summons dated May 17, 2023 for the sharing of rental income from the estate asset Plot No BII/9 which was by Order of the Court of March 23, 2023 distributed to named beneficiaries at paragraph 24 (1) (a) (ii) thereof, as follows:



- (ii) Plot No BII/9 ½ acre to Mrs Kirimi - 1/2 acre then the other ½ acre to be shared by Susan Kairanya, Catherine Nkatha, Jane Kairanya and Rose Kaburu;”
2. The application is supported by the Affidavit of Susan Mukuba Kairanya who also filed a supplementary affidavit in response to the Replying Affidavits of the 6th and 7th Interested parties. The applicant’s case is the asset Lr No Meru Municipality Block II/9 is fully developed attracting substantial rental income of which the respondent Mary Kirimi who is only entitled to ½ share thereof collects the lion’s share of 98% being 9 out of 11 tenants whose names are set out in the supporting affidavit, and as there was no physical designation as to which physical side the beneficiaries should take, fair sharing ought to accord to ½ share of all the collected rent to each side.
 3. The applicant further sought an order for the surrender of rent allegedly collected by Mwenda Jacob Kairanya for the months of April and May 2023.
 4. The principal respondent to the application Mary Karimi Kirimi the 7th Respondent filed a Replying Affidavit and subsequently a further affidavit. The respondent’s case is that the suit plot is fully developed and has two equal wings namely Wing A and B and that she had following ruling of the court of March 23, 2023 taken “Wing A as it is on the said wing that I have been carrying on my business in one of the shop since 1996” and that “the 1st 2nd 3rd and 4th Interested Party took Wing B.” The Respondent’s justified her proposal for wing-wise sharing of rental income at paragraph 8-10 of the Replying Affidavit as follows:
 8. That it is a matter of fact that even in the family meeting of which the applicants have annexed as annexure “MK2” which the court followed in distributing properties in the name of Kairanya Investment Ltd, it was proposed that I take half of the said Plot No Meru Municipality Block II/9 because the Kairanya family and the administrators were aware that I was carrying on business in one of the shop situated in he said plot in Wing A.
 9. That the 1st, 2nd, 3rd and 4th Interested Parties/applicants should be contented with Wing B of Plot No Meru Municipality Block II/9 pending the formal subdivision of the said Plot No Meru Municipality Block II/9.
 10. That taking into account that each wing (A & B) has tenants, then I should take rent from all tenants in wing A while the 1st, 2nd, 3rd and 4th Interested Parties should take rent from the tenants occupy in rooms and or shops in wing B until the formal subdivisions of the said plot. (sic)”

In answer to the prayer for the order for surrender of rent allegedly paid to Mwenda Jacob Kairanya, the respondent claimed that the tenant Cynthia Kanana had paid rent upto May 2023 to Kairanya Investment Ltd before the ruling of court of March 23, 2023 and that the said company has already been dissolved by court.

5. The 6th Interested Party’s Affidavit was sworn by one of the petitioners Jeremy Kimathi Kairanya on June 6, 2023 in support of the Respondent’s case and asserts “that Plot No Meru Municipality Block 11/9 has two equal wings A and B. the 7th Interested Party took Wing A as per the family meeting held on December 4, 20221 and he applicant took Wing B” and “that the rent collected from both wings is almost equal depending on the room/shops occupied, each party should be contented with what they have and avoid being driven by greed and envy.” It was also alleged that prior to March 23, 2023, when the court distributed the estate, “it is the 6th Interested Party who collected and managed all the rental properties and not Mwenda Kairanya as alleged by the applicants.”

Need for locus quo visit



6. The applicant's supplementary affidavit of Susan Mukuba Kairanya of June 12, 2023 makes a compelling case for a site visit in deponing that –
 3. I wish to state that there is no Wing A or B in Meru Municipality Block II/9. The said property is developed with a single building but there are several shops on its three frontages because it is at a road junction.
 4. That if it be true that there are wings A & B as alluded to, then the same could clearly be stated so in the minutes of December 4, 2021.
 5. That further, in its ruling of March 23, 2023, the court never designated the property to have a Wing A or B and there is no single pleading filed prior to the ruling on March 23, 2023, stating that the suit property has 2 wings.”
7. Mary Karimi Kirimi in her further replying Affidavit of June 14, 2023 maintains that there are two Wings A and B, even though these were not stated in the minutes of the family meeting of December 4, 2021, and urges at Paragraph 13 “that the manner in which the building in Plot No Meru Municipality is built, it only require a surveyor to come and place a boundary between Wing A and B as the manner in which the said building is built is self-evident.” (sic)
8. On technical legal sense, there is apart from the simple matter of sharing of rental income, an issue of the legal holding of the interest in the property to give effect to its distribution to the heirs on the ratio ½:½ shares to Mary Karimi and 1-4 Interested Parties.
9. In the circumstances, the Court considers it appropriate to visit the locus quo of the suit asset Plot No Meru Municipality Block 11/9 to observe the development of the plot and the existence of any wings to assist the court in assessing the feasibility of the sharing of the asset fairly and equally among the relevant beneficiaries and the related question of sharing of rents thereon.
10. There is an obvious error on the face of the ruling of March 23, 2023 in that the distribution indicates the sharing as ½ acre each while the Minutes of the family meeting of December 4, 2021 on which the distribution is based provided for ½ Share, rather than ½ acre, of the property Plot No BII/9 going to Mrs Kirimi and the other ½ share to be shared by Susan Kairanya, Catherine Nkatha, Jane Kairanya and Rose Kaburu. The Court shall therefore correct the distribution to read ½ share of the asset rather than ½ acre pursuant to the accidental slip rule of section 99 of the Civil Procedure Act.

Orders

11. Accordingly, for the reasons set out above, the Court makes the following orders:
 1. The ruling of March 23, 2023 is revised on accidental slip rule to provided at paragraph 24 (1) (a) (ii) thereof to distribute the estate asset named therein as follows:
 - (ii) Plot No BII/9 - ½ share to Mrs Kirimi then the other ½ share be shared by Susan Kairanya, Catherine Nkatha, Jane Kairanya and Rose Kaburu.”
 2. The final determination of the application dated May 17, 2023 is held in abeyance to await a visit by the Court to the suit property, and, if necessary, the court shall then upon such hearing as is necessary make orders for account as appropriate.
 3. The Court shall visit the *locus quo* of the suit asset Plot No Meru Municipality Block 11/9 to observe the development of the plot and the existence of any wings and related matters to assist the court in the equal and fair sharing of the asset among the relevant beneficiaries.



4. Directions on the court visit to the locus quo shall be taken on Monday, September 18, 2023.
5. There shall be no order as to costs.

Order accordingly.

DATED AND DELIVERED ON THIS 10TH DAY OF AUGUST, 2023.

EDWARD M. MURIITHI

JUDGE

Appearances:

Mr, Kamunde Advocate for the Petitioners.

Mr. Nyamu Nyaga Advocate for Mary Kiriimi.

Mr. Mwirigi K. Advocate for Martin Kairanya/Applicant.

Mr. Gichunge Advocate for 1-5 Interested Parties.

Mr. Murango Mwenda Advocate for the 6th Interested Party.

