



**In re Estate of Robert Murithi alias M’inoti M’ituma alias Inoti Ituma (Deceased)
(Succession Cause 337 of 2005) [2023] KEHC 25783 (KLR) (28 November 2023) (Ruling)**

Neutral citation: [2023] KEHC 25783 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
SUCCESSION CAUSE 337 OF 2005
EM MURIITHI, J
NOVEMBER 28, 2023**

BETWEEN

ALICE CHAKU ROBERT PETITIONER

AND

AGNES KARIMI MURITHI 1ST RESPONDENT

PATRICK KIOGORA MURITHI 2ND RESPONDENT

LAWRENCE MUTUGI 3RD RESPONDENT

RULING

1. On 22nd March, 2023, Alice Chaku Robert (the Petitioner herein) filed a summons application dated even date seeking the following orders:
 1. Spent.
 2. That the honourable court be pleased to review the orders for distribution of the deceased estate made on 9th July 2015 to include all the beneficiaries of the deceased.
 3. Costs be provided for.
2. The application is brought under the provisions Section 73 of the Probate and Administration Rules.
3. The application is supported by the supporting affidavit of Alice Chaku Robert sworn on 22nd March, 2023
4. The Application was opposed by the Respondents vide a Replying Affidavit sworn on 30th May, 2023 by Agnes Karimi Murithi, the 1st Respondent herein. The 1st Respondent has sworn the affidavit on her own behalf and on behalf of the 2nd and 3rd Respondents.



The Petitioner's Case

5. In her supporting affidavit to the application, the Petitioner avers that on 9th July, 2015, it was ordered that the deceased estate be distributed to the three (3) houses of the deceased without involving all the beneficiaries. That she did the distribution out of ignorance of the law as she was not represented by counsel. That by the present application, she now prays that the estate of the deceased be re-distributed so that all the beneficiaries of the deceased can get a share of the estate of the deceased. The Petitioner proceeded to propose the mode of re-distribution of the estate of the deceased under paragraph 8 of the supporting affidavit as follows:

A. L.R. No. Abogeta/l-mikumbine/164

To be shared equally among:

- a. Alice Chaku Robert
- b. Julia Ncabira Murithi
- c. Agnes Karimi Murithi
- d. Florence Ncugune Nkonge
- e. Rosemary Kinanu Murithi
- f. Eunice Kagwiria Murithi
- g. Faith Gakii Murithi
- h. Jane Nkirote Murithi
- i. Stella Mukiri Robert
- j. Harriet Gatwiri
- k. Josphine Mukiri
- l. Lawrence Mutugi
- m. Timothy Mawira
- n. Charity Kinya
- o. Patrick Kiogora Murithi

B. L.R. No. Abothuguchi/kiija/233

To be shared equally among:

- a. Alice Chaku Robert
- b. Julia Ncabira Murithi
- c. Agnes Karimi Murithi
- d. Florence Ncugune Nkonge
- e. Rosemary Kinanu Murithi
- f. Eunice Kagwiria Murithi
- g. Faith Gakii Murithi



- h. Jane Nkirote Murithi
- i. Stella Mukiri Robert
- j. Harriet Gatwiri
- k. Josphine Mukiri
- l. Lawrence Mutugi
- m. Timothy Mawira
- n. Charity Kinya
- o. Patrick Kiogora Murithi
C. Plot No. 81b Nkubu Market
To be shared equally among:
 - a. Alice Chaku Robert
 - b. Agnes Karimi Murithi
 - c. Patrick Kiogora Murithi
D. L.R. No. Nkune/taita/589 and 590
To be shared equally among:
 - a. Ruth Mwari M'Mwarania
 - b. James Mwirigi Mugambi
 - c. Tony Mureti Kimathi

6. The Petitioner thus prayed that the application be allowed.

The Respondents' Case

- 7. In the affidavit in response to the application, the Respondents aver that the mode of distribution of the subject estate as per the initial grant that was confirmed on 9th July, 2015 was friendlier since the same was informed by the fact of existence of the three houses of the deceased although the beneficiaries had misgivings about the sharing of L.R. No. Nkune/taita/589 and 590. That their misgivings on the said two parcels of land arose from the fact that the two cannot be said to have been equitably distributed since the beneficiaries are from the same house only, that is, the 1st house of the Petitioner. That Ruth Mwari M'Mwarania is the Petitioner's daughter and James Mwirigi Mugambi and Tony Mureti Kimathi are sons of the said Ruth Mwari M'Mwarania.
- 8. According to the Respondents, the distribution of L.R. No. Nkune/taita/589 and 590 as proposed by the Petitioner would mean that her house will solely benefit from the said two parcels of land and that this will be in favour of her house over the other two houses. The Respondents thus proposed that the two parcels of land be distributed equally amongst the representatives of the three houses who are:
 - 1. Alice Chaku Robert
 - 2. Agnes Karimi Murithi
 - 3. Patrick Kiogora Murithi



9. The parties consequently filed their respective submissions through their counsel on record. In summary, it was submitted on behalf of the Petitioner that the distribution ordered by court on 9th July, 2015 did not involve all the beneficiaries. The Petitioner thus prayed that the estate be re-distributed as per her proposal in her affidavit in support of the application reproduced herein above. On the other hand, it was submitted on behalf of the Respondents that the mode of distribution proposed by the Petitioner tilts in favour of only one house, which is the Petitioner's house. That in the interest of justice, the most equitable mode of distribution would be to expunge the grandchildren of the Petitioner from the list of beneficiaries of the estate of the deceased and for L.R. No. Nkune/taita/589 and 590 to be equitably distributed among the three households of the deceased.

Analysis and Determination

10. The Petitioner/Applicant in her application dated 22nd March, 2023 is seeking a review of the orders on distribution of the subject estate to include all the beneficiaries of the deceased. The Respondents in their affidavit in response to the application appear not to have a problem with the prayer for review of the said orders. Their only contention is that the mode of distribution proposed by the Petitioner in respect of L.R. No. Nkune/taita/589 and 590 is not equitable.
11. According to the Record, on 9th July, 2015, the grant issued to the Petitioner was confirmed as follows:
- A. L.R. No. Abogeta/l-mikumbine/164
To be shared equally among:
- a. Alice Chaku Robert
 - b. Agnes Karimi Murithi
 - c. Patrick Kiogora Murithi
- B. L.R. No. Abothuguchi/kiija/233
To be shared equally among:
- a. Alice Chaku Robert
 - b. Agnes Karimi Murithi
 - c. Patrick Kiogora Murithi
- C. Plot No. 81b Nkubu Market
To be shared equally among:
- a. Alice Chaku Robert
 - b. Agnes Karimi Murithi
 - c. Patrick Kiogora Murithi
- D. L.R. No. Nkune/taita/589 And 590
To be shared equally among:
- a. Ruth Mwari M'Mwarania
 - b. James Mwirigi Mugambi
 - c. Tony Mureti Kimathi



12. It has now come to light, which fact is not disputed, that the deceased herein was survived by the following beneficiaries:
 1. Alice Chaku Robert - Widow
 2. Julia Ncabira Murithi - Daughter
 3. Agnes Karimi Murithi - Widow
 4. Florence Ncugune Nkonge - Daughter
 5. Rosemary Kinanu Murithi - Daughter
 6. Eunice Kagwiria Murithi - Daughter
 7. Faith Gakii Murithi - Daughter
 8. Jane Nkirote Murithi - Daughter
 9. Stella Mukiri Robert - Daughter
 10. Harriet Gatwiri - Daughter
 11. Josphine Mukiri - Daughter
 12. Lawrence Mutugi - Son
 13. Timothy Mawira - Son
 14. Charity Kinya - Daughter
 15. Patrick Kiogora Murithi - Son
13. This Court has inherent powers under Rule 73 of the Probate and Administration Rules to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court. The present application is for review of the orders made on 9th July, 2015 to include all the beneficiaries of the deceased. The application is merited to the extent that the said orders should be reviewed.
14. On the issue of the mode of distribution of the estate, the court has considered the mode of distribution proposed by parties. The law that guides this court in the circumstances is section 40 of the [Law of Succession Act](#) (the “Act”). The said Section provides as follows:
 - (1) Where an intestate has married more than once under any system of law permitting polygamy, his personal and household effects and the residue of the net intestate estate shall, in the first instance, be divided among the houses according to the number of children in each house, but also adding any wife surviving him as an additional unit to the number of children.
 - (2) The distribution of the personal and household effects and the residue of the net intestate estate within each house shall then be in accordance with the rules set out in sections 35 to 38.”
15. Section 38 of the Act provides as follows:

“Where an intestate has left a surviving child or children but no spouse, the net intestate estate shall, subject to the provisions of sections 41 and 42, devolve upon the surviving child, if there be only one, or shall be equally divided among the surviving children.”



16. From the provisions of section 38 of the Act, it is clear that the net intestate estate shall be divided equally among the surviving children. In view of the said provision, the court finds that the Respondents have shown that there is sufficient cause that the mode of distribution proposed by the Petitioner should be modified to enable the three households of the deceased to share the deceased's estate equally.

Conclusion

17. Accordingly, for the reasons set out above, the Court finds that the application should be allowed and the Court therefore makes the following orders:
1. The mode of distribution in the confirmed grant dated 9th July 2015 is set aside.
 2. The deceased's estate shall be distributed as per paragraph 5 above save for L.R. No. Nkune/taita/589 and 590 which shall be equally distributed among:
 - i. Alice Chaku Robert
 - ii. Agnes Karimi Murithi
 - iii. Patrick Kiogora Murithi
18. There shall be no orders as to costs.
19. File Closed.

Order accordingly.

DATED AND DELIVERED THIS 28TH DAY OF NOVEMBER, 2023.

EDWARD M. MURIITHI

JUDGE

