



In re Estate of Paul Mutwiri Murithi (Deceased) (Succession Cause E016 of 2023) [2023] KEHC 26692 (KLR) (20 December 2023) (Ruling)

Neutral citation: [2023] KEHC 26692 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
SUCCESSION CAUSE E016 OF 2023
TW CHERERE, J
DECEMBER 20, 2023
IN THE MATTER OF THE ESTATE OF PAUL MUTWIRI
MURITHI (DECEASED)**

BETWEEN

MARGARET GACHABI MUTWIRI PETITIONER

AND

REGINA CHURE RESPONDENT

RULING

1. The parties herein are widows of the deceased. The Petitioner/Applicant has 2 children and the Respondent 8 children.
2. A dispute has arisen concerning use of rental income accruing from deceased's estate comprised in LR. Nkuene/Taita/560 which is under the management of the Respondent and LR. Nkuene/Taita/1305 which is under the management of the Applicant.
3. As a result, the Petitioner/Applicant by notice of motion dated 12th October, 2023 filed on 18th October, 2023 prays that Respondent be restrained from collecting rent from LR. Nkuene/Taita/560, be ordered to account for all funds and proceeds collected therefrom and finally that the rent proceeds be deposited in court.
4. By her replying affidavit sworn on 24th November, 2023, Respondent does not deny that she collects about KES. 150,000/- from LR. Nkuene/Taita/560 but contends that she only spends Kes. 80,000/- after settling bills arising from the asset. She also contends that Petitioner/Applicant similarly collects about KES. 70,000/- from LR. Nkuene/Taita/1305.
5. The two issues that arise from this application relate to preservation of the estate and provision pending the confirmation of the grant.



6. Section 27 of the Law of Succession Act gives this court the discretion in making orders regarding dependents as follows: -

“In making provision for a dependent the court shall have complete discretion to order a specific share of the estate to be given to the dependent, or to make such other provisions for him by way of periodical payments or a lump sum, and to impose such conditions, as it thinks fit.”

7. Both parties have not provided any documentary evidence in support of the proceeds collected from the two assets and how the same is spent.

8. In order to preserve the estate from being wasted at the same time ensuring that the dependents are provided for pending the hearing and determination of this Petition, it is hereby ordered:

1. All rental income collected from LR. Nkuene/Taita/560 and LR. Nkuene/Taita/1305 shall be deposited with the court starting with the proceeds for December, 2023
2. Order (1) above shall be served on all tenants in occupation of LR. Nkuene/Taita/560 and LR. Nkuene/Taita/1305 for compliance
3. Parties are directed to either agree on distribution of the income and failing to do so file affidavits of the existing and future means and needs of each dependant to assist the court make an informed decision
4. Pending determination of the amount of provision to the dependents, the court makes an order allowing the Petitioner/Applicant and the Respondent to draw Kes. 5,000/- for each dependent in their respective houses, from the rental proceeds deposited in court
5. Petitioner/Applicant and Respondent are directed to file accounts for funds collected from LR. Nkuene/Taita/560 and LR. Nkuene/Taita/1305 respectively from May 2023 when deceased died
6. Mention on 14th March, 2024 to confirm compliance of these orders and for further orders

DATED AT MERU THIS 20TH DAY OF DECEMBER 2023

WAMAE. T. CHERERE

JUDGE

Appearances

For Petitioner/Applicant -Mr. Muriuki for Mbogo & Muriuki Advocates

For Respondent - Mrs. Kaume for M.G..Kaume & Co. Advocates

