



REPUBLIC OF KENYA



**In re Estate of Elijah Waweru Karerema & Zipporah Muthoni  
Waweru (Deceased) (Succession Cause 30 of 2002 & 26 of 2016  
(Consolidated)) [2022] KEHC 11858 (KLR) (21 April 2022) (Ruling)**

Neutral citation: [2022] KEHC 11858 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
SUCCESSION CAUSE 30 OF 2002 & 26 OF 2016 (CONSOLIDATED)  
TM MATHEKA, J  
APRIL 21, 2022  
ESTATE OF ELIJAH WAWERU KAREREMA (DECEASED)  
AND  
ESTATE OF ZIPPORAH MUTHONI WAWERU (DECEASED)**

**RULING**

1. Elijah Waweru Karerema (Elijah) and Zipporah Muthoni Waweru (Zipporah) were husband and wife, and the parents of: -
  - i. Veronica Njeri Waweru
  - ii. Paul Mwangi Waweru
  - iii. Joseph Kimani Waweru
  - iv. Milka Njoki Waweru
  - v. Gladys Wambui Waweru
  - vi. Mary Wanjiku Waweru
  - vii. Sarah Gathoni Waweru
  - viii. Leah Wanjiku Waweru
  - ix. Beatrice Waithera Waweru
2. Elijah died on 22<sup>nd</sup> August, 2001 and was survived by his wife Zipporah and their 9 children. The widow filed Succession Cause No.30 of 2002. Grant of Letters of Administration Intestate was made to her on 12<sup>th</sup> July, 2002 and Certificate for Confirmation of Grant made on 14<sup>th</sup> October, 2005 in which she inherited all the assets of her husband namely: -
  - i. Nakuru Municipality Block 21/215 Freehold Estate



- ii. Nakuru Municipality Block 1/1612 Lake View Estate
  - iii. Bahati/Kabati Block 1/4749
  - iv. Molo South/ Kuresoi Block 2/106
  - v. L.R. 15 Plot No.416- Kanyi Estate Nakuru Town
3. Zipporah died on 22<sup>nd</sup> June 2015. Paul, Gladys and Mary were replaced her as the administrators of the Estate. They annexed a consent dated 15<sup>th</sup> May, 2019 signed by all the children of the deceased. The consent was for the “Rectification of Certificate of Confirmation of Grant.”
  4. Subsequently, a rectified Certificate of Grant was issued on 20<sup>th</sup> June, 2019 in which Paul, Gladys and Mary were now the Administrators, and the estate of Elijah was listed as: -
    - i. Bahati Kabati Block 1/11270
    - ii. L.R.28443 (GITHIMA)
    - iii. Nyandarua/Kaimbaga/656
    - iv. Ndefo Plots (2)
    - v. Bahati Kabati Block 5/2385
    - vi. Bahati Kabati Block 1/2385
    - vii. Shares in KCB
    - viii. British American Money Market Fund
    - ix. Mpesa – 0726-324843
    - x. Cash at KCB Kenyatta Avenue A/c No.1106949099
    - xi. Fixed Bank Account – Flamingo Branch
    - xii. Shares – Safaricom
    - xiii. Shares – Mumias Sugar Company
  5. These assets were to be shared equally among the nine beneficiaries.
  6. Upon the death of Zipporah, Paul, Gladys and Mary filed Succession Cause No. 26 of 2018 seeking to be the administrators of their mother’s estate. Annexed to their application is a consent dated 16<sup>th</sup> March, 2018 signed by all the beneficiaries except Beatrice Waithera: - The consent is with respect,
 

“To the making of a grant of administration intestate to a person of equal or lesser priority.”
  7. The grant to the estate of Zipporah was made to them 24<sup>th</sup> September, 2018. On 13<sup>th</sup> May, 2019, they filed Summons for Confirmation of Grant, with an Affidavit of support detailing the manner of distribution.
  8. It is in this backdrop that Veronica, Mary, Sarah and Leah have filed Summons dated 29<sup>th</sup> September, 2020 in Succession Cause No.30 of 2002 seeking orders against Paul and Gladys as the administrators of the estate of Elijah, that they be asked to show cause why the grant issued to them should not be revoked and a fresh one re-issued to other administrators for misappropriation of earnings from the estate’s properties;



9. That with respect four properties: -
  - i. Nakuru Municipality Block 21/215 Freehold Estate
  - ii. Nakuru Municipality Block 1/1612 Lake View Estate
  - iii. Bahati/Kabatini Block 1/4749
  - iv. Molo South/ Kuresoi Block 2/106
 There be orders that: -
  - i. The two of them to render accurate account of the rental income.
  - ii. A licensed agent be appointed by all the beneficiaries to manage, collect income and render account for a period of time.
  - iii. That Gladys be ordered to surrender all the original title documents for the said properties and share certificates and deposit them in the Estate Account.
10. The application is supported by the Joint Affidavit of Veronica and Mary sworn on 29<sup>th</sup> September, 2020.  
Paul and Gladys opposed the application vide their Affidavit sworn on 4<sup>th</sup> November, 2020.
11. In the same file Joseph Kimani Waweru has filed an Application, Summons for Revocation of Grant dated 10<sup>th</sup> March, 2021 supported by his own Affidavit. He also seeks that Paul and Gladys be ordered to render an account of the assets and liabilities of the estate. His complaint is specific, that he was never involved in the filing of the petition/the process leading to the rectification and confirmation of the grant. He accuses Paul and Gladys for misusing and pillaging the estate of Elijah. The application is opposed by Paul and Gladys; vide their affidavit sworn on 10<sup>th</sup> July, 2021.
12. Similar applications were filed by the same parties on Succession Cause No.26/2018 Re estate of Zipporah Muthoni Waweru. The only difference being that the application by Veronica and Mary in Succession Cause No.26 of 2018 is that the complaint is about Zipporah's account in Kenya Commercial Bank Limited – Flamingo Branch Nakuru and the accusation that the administrators have failed to call meetings for the distribution of the Estate of Zipporah.
13. On his part, Joseph brings the same application on the same grounds.
14. Inevitably, the response by Paul and Gladys is the same, they deny any wrong doing, they provide evidence of meetings and partial distribution of the estate through the sharing of cash from Zipporah's account to the respective accounts of each beneficiary.
15. Parties filed Submissions through their counsel, for Veronica and Mary through Karanja Mbugua & Co. Advocates, for Paul and Gladys, through Njira Associates & Co. Advocates, and for Joseph through Sheth & Wathigo Advocates.
16. I have carefully considered all the affidavits, the submissions and the record. I deal with the issues for determination one by one as hereunder: -

**i. Whether Joseph Kimani Waweru was involved in the petitioning for the grant, and rectification of, and confirmation of the grant in these estates.**

From the court record there is clear evidence that Joseph signed all the consents. With respect to his mother obtaining the original grant on Succession Cause No.30 of 2002 she did not have any obligation to obtain his consent, she being the widow, that is what s. 66 ( a ) states surviving spouse or spouses,



with or without association of other beneficiaries;. When she died and his three siblings Paul, Gladys and Mary took over, there is a consent he has signed supporting the appointment of the administrators, Similarly, in the estate of Zipporah, he has signed the requisite consents. He alleges fraud, concealment of material facts, but he has not supplied any evidence to that effect. How can he expect the court to accept his allegations when they are not supported by any evidence, and when the averments made by Paul and Gladys are supported by the record? If he is alleging that his signature was forged or something to that effect, it was upon him to avail evidence to establish that fact. As matters stand, it is evident from the record that Joseph actively participated in both causes, in the Rectification and Confirmation of the Grant in Succession Cause 30 of 2002, in the Petition, issuance of Certificate of Grant in Succession Cause 26 of 2018.

#### **ii. Whether the administrators have failed to administer the estate.**

This is an issue raised by the three applicants. It is noteworthy that Mary, who is a co-administrator in both estates has chosen to attack her co-administrators while she is still an administrator. It is not clear why she would join up with the other beneficiary, Veronica to complain, yet she is in the position of administrating with Paul and Gladys.

For her to raise issue as a non-administrator she would have to forfeit her position first, as she cannot have all these powers conferred upon her, then turn around and begin to act powerless. She has not demonstrated how the respondents have relegated her to the peripheries of the administration of the estate. How does she expect them to fulfil their collective goal when she is pulling in a different direction?

That said, it is true that the grants were confirmed on 2019 and 2020 respectively. Paul and Gladys have explained the challenges they have had with some of the beneficiaries, in particular their co-administrator and some of the beneficiaries.

I note that the only thing remaining in this estate is the sharing of the estate. It seems to be common ground that all the cash money that was available has been shared, and what remain is the rental income where, the respondents have demonstrated that there is an Estate Account where this money and the original documents for the estate properties are deposited.

Hence without evidence to the contrary, I find that there is no failure to administrator the estate to warrant the revocation of the grant.

#### **iii. Whether the respondents ought to render account.**

It is evident that there is no issue with the mode of distribution of the estate, as per the certificates of confirmation of grant. The beneficiaries are yet to receive their equal shares of the rest of the estate. The estate comprises of rental income which is the easiest to administer, if only each beneficiary would tell himself/herself that these properties are not theirs, they belong to their deceased parents, and when their parents were alive they were not fighting over the said properties, that none of them has a higher right over the properties than the other, and that they are fortunate to be living off the sweat of their deceased parents. It is a unfortunate that 20 years after the demise of their father, and 7 years after that of their mother they are still wrangling, yet, each is entitled to an equal share of the property. What is so difficult in determining this equality yet it is in terms for cash money? The applicants may have a point that the Administrators have not been candid with the rental income. The administrators should not wait to be pushed by beneficiaries to render account. They have a statutory duty to do so, because theirs is a position of trust. What is difficult about rendering a monthly account for the rental income? If indeed all the rental income goes into the estate account there ought to be no difficulty in the beneficiaries getting access to the information in that accounts at regular intervals to avoid these



suspicions. On this issue, it is only fair and just, and a compliance issue for the administrators do render account of the estate.

**iv. Whether Gladys should deposit the original documents with the Estate Account.**

On this, only the administrators are to be in possession of the estate documents, and if there is an Estate Account, then all the documents with respect to the estate ought to be held therein.

The applicants have not demonstrated any evidence of misappropriation/misuse/intermeddling by the respondents.

In the same manner, if as alleged, any other beneficiary holding any original documents with respect to the estate must surrender the same to administrators for their statutory purposes, as it is them who are accountable by law over the estate.

**v. Whether an estate agent is to be appointed?**

The issue of whether any other estate agents other than the ones dealing with the estate at the moment need to be appointed will depend on the report of the administrators as required by this court.

15. Final Orders

- i. The application for revocation of the grant is not merited and is dismissed.
- ii. The application for rendering of account is allowed.
- iii. Within 30 days hereof the administrators to render account of each of the estates a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of the account.
- iv. Upon the rendering of the accounts, the beneficiaries to be assigned a Court Annexed Mediator to finalize the remainder of the sharing of the estate.
- v. For purposes of rendering accounts and assignment of a mediator the matter be mentioned before the Deputy Registrar Mediation within 30 days hereof.
- vi. The matter be mentioned before the Judge within 90 days hereof for compliance and further directions.
- vii. Each party to bear its own costs.
- viii. Orders Accordingly

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 21<sup>ST</sup> DAY OF APRIL, 2022.**

**MUMBUA T. MATHEKA,**

**JUDGE.**

**In the presence of;**

CA Edna

M/s Karanja Mbugua

Ms. Aoko for Mr. Kisila

