



**In re Estate of Joseph Gichuki Riunge (Deceased) (Succession Cause
3079 of 2002) [2022] KEHC 10678 (KLR) (Family) (31 May 2022) (Ruling)**

Neutral citation: [2022] KEHC 10678 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 3079 OF 2002
AO MUCHELULE, J
MAY 31, 2022**

BETWEEN

JOSEPHINE NJERI RIUNGE APPLICANT

AND

FRANCIS KIMANI GICHUKI 1ST RESPONDENT

DAVID MUNIU RIUNGE 2ND RESPONDENT

FRANCIS MBURU RIUNGE 3RD RESPONDENT

RULING

1. The deceased Joseph Gichuki Riunge died intestate on 9th March 2001. He left a substantial estate. The grant of letters of administration intestate was issued to his children Theresia Wanjiro Riunge, Francis Kimani Gichuki (1st respondent), Francis Mburu Riunge (3rd respondent) and David Muniu Riunge (2nd respondent). The grant was confirmed on 9th July 2018 and the estate distributed to the beneficiaries. The estate's property was to be each equally shared among the beneficiaries.
2. On 27th November 2019, following application by Theresa Wanjiro Riunge and Josephine Njeri Riunge (the administratrix and applicant), the court directed the respondents to distribute the estate of the deceased in accordance with the certificate of confirmation within 60 days, failing which the Deputy Registrar of this court be empowered to sign all the necessary documents on their behalf to effect the distribution.
3. The 1st and 2nd respondents vide application dated 17th February 2020 sought to have the estate redistributed. It was clear that, among other things, they did not want the estate shared equally among all the beneficiaries of the estate. The application was dismissed with costs on 5th July 2021.



4. The respondents had preferred an appeal to the Court of Appeal following the confirmation that had been done on 9th July 2018. The appeal was pending, and the request for stay pending the hearing and determination of the appeal was dismissed on 12th February 2019.
5. The current application dated 29th September 2021 is by the applicant Josephine Njeri Riunge against the respondents. Her complaint is that the estate remains undistributed and that even following the order that the Deputy Registrar signs documents on behalf of the respondents to effect the transfers, the transfers had not been done because the respondents continue to hold the original land title documents. The Ministry of Lands cannot effect the transfers without these original documents. The applicant sought the orders that the respondents do surrender the original title documents to her advocates and/or that the court orders the Ministry of Lands to effect the transfers in accordance with the certificate of confirmation.
6. The respondents opposed the application. First, they wanted the application to await the resolution of the appeal. They indicated they had also appealed against the ruling of this court dated 5th July 2021 refusing the redistribution. Secondly, they proposed that the family members do sit together to amicably resolve the issues pertaining to the distribution of the estate. Thirdly, that the applicant was not one of the administrators of the estate of the deceased and cannot therefore seek to be supplied with documents pertaining to the estate.
7. The applicant is interested in the estate of the deceased in the sense that she is one of the children of the deceased and a beneficiary of his estate. Her stake in the estate was determined in the certificate of confirmation and has every right to demand of the administrators that she be given that stake; that share. Infact, under section 76(c)(ii) of the *Law of Succession Act* (Cap 160) she can ask the court to revoke the grant issued to the respondents for their failure to proceed diligently with the administration of the estate. Under section 83(g) of the Act, the administrators were required to complete the administration of the estate within six months following the confirmation of the grant and to file into court a full and accurate account of the completed administration. It follows that the claim by the respondents that the applicant has no capacity to seek them to produce the title documents to enable the completion of the administration is without any legal basis.
8. On the issue of the appeals, it is clear that, without stay of the certificate of confirmation and the consequent decree, the applicant is entitled to the fruits contained in the certificate. She is entitled to have the certificate and decree executed, and this is what she is chasing through the present application.
9. As to whether the family should sit to deliberate on the redistribution, it is clear that the positions of the applicant and that of the respondents are diametrically opposed as regard the sharing of the estate. In any case, the estate has already been shared and it is the respondents who do not like what has happened. A decision has been rendered on the sharing of the estate. But more important, nothing stops the respondents, as administrators of the estate, from reaching out to the applicant to resolve this dispute and the appeals amicably.
10. Consequently, I allow the application with costs. The respondents shall have 14 days to surrender the titles and other necessary documents to the Ministry of Lands to enable the realisation of the interests of the applicant and other beneficiaries as contained in the certificate of confirmation. If the respondents do not surrender the documents, the respective Land Registrars shall dispense with the production of the documents and effect the necessary transfers. Section 27 of the *Land Registration Act* empowers the Land Registrar to dispense with the production of the original title documents.

DATED and DELIVERED at NAIROBI this 31ST day of MAY 2022.

A.O. MUCHELULE



JUDGE

