



**In re Estate of Kariuki Mathu (Deceased) (Succession Cause 554 of 2010)
[2022] KEHC 12418 (KLR) (Family) (27 July 2022) (Ruling)**

Neutral citation: [2022] KEHC 12418 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 554 OF 2010
AO MUCHELULE, J
JULY 27, 2022
IN THE MATTER OF THE ESTATE OF KARIUKI MATHU (DECEASED)
LUCY WAIRIMU NDICU....INTERESTED PARTY/APPLICANT
VERSUS
MARY SEKUNDA WANGUI KARIUKI.....RESPONDENT**

RULING

1. The applicant Lucy Wairimu Ndicu is one of the children of the deceased Kariuki Mathu who died intestate on November 12, 1966. He left a piece of land Ngong/Ngong/583 measuring about 15 acres. The deceased had two widows (Veronica Njambi Kariuki and Monica Waceke Kariuki), 5 sons (John Njoroge Kariuki, George Njenga Kariuki, Stephen Kairu Kariuki, Francis Martin Kamau Kariuki and John Kinyanjui Kariuki) and 4 daughters (Monicah Wamuhu Mungai, Ruth Nyakio Muturi, the applicant and Cecilia Gathoni Kariuki). The widows died, as did John Njoroge Kariuki, Monicah Wamuhu Mungai, Cecilia Gathoni Kariuki, George Njenga Kariuki, Stephen Kairu Kariuki and Francis Martin Kamau Kariuki. On March 30, 2011 the court appointed Mary Sekunda Wambui Kariuki (the widow of John Njoroge Kariuki) and Harriet Wangui Kariuki (the widow of Stephen Kairu Kariuki) as the administratrices of the estate of the deceased.
2. Following an application for the confirmation of the grant, the matter was heard orally and the estate distributed so that Mary Sekunda Wangui Kariuki (on behalf of the estate of her late husband) got 7 acres, whereas Rosalia Waringa Njenga, Harriet Wangui Kariuki, Mary Wangui Kariuki and Mary Nyambura Kariuki, each representing the estate of a late son of the deceased) received 2 acres each.
3. None of the daughters of the deceased received any benefit in the certificate of confirmation issued on October 26, 2011. The applications of the revocation of the grant as confirmed were filed on October 3, 2012 by Cecilia Gathoni Kariuki and Lucy Wairimu Ndichu, and on October 12, 2012 by Regina Njambi Kariuki (daughter of the late Harriet Wangui Kariuki). The applications were heard and dismissed on May 23, 2019.



4. Basically, the daughters of the deceased were denied benefit because the court found that the deceased having died in 1966 the applicable law was the Kikuyu customary law which provided that married daughters of a deceased could not inherit their father's estate. Secondly, that the widows of the deceased had agreed on how the estate should be shared. This was done before their death.
5. There is an application dated June 26, 2019 by the applicant Regina Njambi Kariuki seeking leave to appeal the decision rendered on May 23, 2019 that dismissed her application for the revocation of the grant as confirmed. The application was opposed by Mary Sekunda Wangui Kariuki (the respondent). It is pending determination.
6. The present application is dated February 10, 2020 by the applicant. She has asked that the firm of Gacau Kariuki & Co Advocates comes on record for her in place of her earlier lawyers J W Ngetho & Co Advocates and then that she be enjoined in the application dated June 26, 2019 by Regina Njambi Kariuki that sought leave to appeal, among other prayers, and that she be allowed to file pleadings in that application. She stated that she was aggrieved by the decision that dismissed the applications for revocation, her then advocates were not in court at the time of the judgment to seek stay and leave to appeal and that, to avoid multiplicity of applications, she seeks to be joined in the application as she is desirous of appealing.
7. The respondent opposed the application on the grounds that the delay to seek leave had not been explained and was not justified; the application will hinder the expeditious disposal of the cause; and that the applicant has no stake in the estate.
8. The applicant was the deceased's daughter who sought to benefit from her father's estate. She stands to be affected by any decision of the court, either here or on appeal. She has to be allowed to join in the application that is seeking leave to appeal. Infact she did not require to seek leave to file an application that seeks leave to appeal the decision that aggrieved her. Whether or not she will persuade the court to grant her leave to appeal is another matter. Secondly, she is constitutionally entitled to counsel of her choice, and therefore her request to have her new advocates to come on record for her will be allowed.
9. For purposes of emphasis, I cite the Court of Appeal decision in *Pravin Bowry v John Ward & Another* [2011]eKLR which approved the holding of the Supreme Court of Uganda in *Deported Asians Property Custodian Board –v- Jaffer Brothers Limited* [1999] IEA 55 (SCU) that:-

“For a person to be joined on the ground that his presence in the suit is necessary for effectual and complete settlement of all questions in the suit one of two things has to be shown. Either it has to be shown that the orders, which the plaintiff seeks in the suit, would legally affect the interests of that person and that it is desirable, for avoidance of multiplicity of suits, to have such a person joined so that he is bound by the decision in that suit. Alternatively, a person qualifies, (on the application of a defendant) to be joined as a co-defendant, where it is shown that the defendant cannot effectively set a defence he desires to set up unless that person is joined in it, or unless the order to be made is to bind that person.”
10. And in *Trusted Society of Human Rights v Mumo Matemu & 5 Others* [2014]eKLR it was held that an interested party is the one who has a stake in the proceedings; one who will be affected by the decision of the court, and therefore ought to be heard on his interest before a decision is rendered in the matter.
11. That being the case, I allow the applicant's application dated June 26, 2019. She has 14 days to formally file and serve an application to seek leave. The application shall be responded to within 14 days. Parties will then exchange written submissions, both in the applicant's application and that of Regina Njambi Kariuki. The matter shall be mentioned on November 28, 2022 to take a ruling date.



12. Costs shall be in the cause.

DATED AND DELIVERED AT NAIROBI THIS 27TH DAY OF JULY 2022.

A O MUCHELULE

JUDGE

