



REPUBLIC OF KENYA



**In re Estate of Grace Wairimu Mugo (Deceased) (Succession Cause 1820 of 2010)
[2022] KEHC 13907 (KLR) (Family) (30 September 2022) (Ruling)**

Neutral citation: [2022] KEHC 13907 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 1820 OF 2010
M THANDE, J
SEPTEMBER 30, 2022**

BETWEEN

SAMUEL KAMANDE MUGO ADMINISTRATOR

AND

MOSES MWANGI WANJIRU 1ST PROTESTOR

RUTH WAMBUI KARERI 2ND PROTESTOR

MARIA WANJA WAMBUA 3RD PROTESTOR

ELIJAH NJOROGE NJOROGE 4TH PROTESTOR

DANIEL MUTHAMI MAINA 5TH PROTESTOR

PAUL KAMAU MWANGI 6TH PROTESTOR

HENRY NJOROGE WANYOIKE 7TH PROTESTOR

GEORGE NUGUNA GATHITU 8TH PROTESTOR

BENSON NGANGA KURIA 9TH PROTESTOR

ELI MURIITHI ETHAIBA 10TH PROTESTOR

JAMES THUKU KAMAU 11TH PROTESTOR

SAMUEL WANJOHI GIKONYO 12TH PROTESTOR

LILIAN WANJIKU KARORI 13TH PROTESTOR

ANTON MUIRU KAMAU 14TH PROTESTOR

SAMUEL WANDERI HETA 15TH PROTESTOR

JOYCE WAIRIMU KAMAU 16TH PROTESTOR



PETER MUREITHI MACHARIA	17 TH PROTESTOR
JAMES KABITHI NJUGUNA	18 TH PROTESTOR
WILSON GITAU NJOMO	19 TH PROTESTOR
MONICA WANJIRU WAWERU	20 TH PROTESTOR
JACQUILINE NJOKI MURIU	21 ST PROTESTOR
JEMIMAH NYAMBURA KIAMA	22 ND PROTESTOR
ELIZABETH WAITHIRA KINYANJUI	23 RD PROTESTOR

RULING

1. The deceased herein Grace Wairimu Mugo died on May 8, 2010 at the age of 73 years. The record shows that the deceased was survived by her 7 children, Njoroge Mugo, Winnie Kiringa Kibathi, Hellen Mumbi Mugo, Samuel Kamande Mugo, Njau Mugo, Gitau Mugo and Eunice Wanjiru Mugo. A grant of letters of Administration (the Grant) in respect of the estate of the deceased was on March 3, 2011 issued to the deceased's son, Samuel Kamande Mugo. The Administrator filed a summons for confirmation of grant over 10 years later, dated April 14, 2021.
2. The Protestors challenged the summons for confirmation of grant by means of their affidavit of protest dated October 7, 2021. It is their case that the deceased subdivided the properties of the estate known as Title Nos Ruiru/Ruiru East Block 2/931 & 932 (the Ruiru Plots) into 34 subplots measuring 40 by 60. The deceased then trading as an unregistered entity known as Kuru Investments Network Limited (KIN) sold the plots to the Protestors. The Protestors were issued with receipts and land share certificates bearing the name of KIN and indicating the specific plot number each Protestor purchased. Following the demise of the deceased, her daughter Eunice Wanjiru Mugo (Eunice) took over the business and continued to sell the plots. In view of the foregoing, the Protestors oppose the summons for confirmation of grant which has proposed that the Ruiru Plots devolve to Eunice. The Protestors contended that the Ruiru Plots do not form part of the estate of the deceased and urged that the same be allocated to them as per the exhibited sketch map of the subdivision.
3. The Administrator filed as notice of preliminary objection dated 1.2.22. His objection is that the Protestors are not beneficiaries of the estate of the deceased under the *Law of Succession Act*. As such their recourse lies in instituting a claim in the Environment and Land Court. The Administrator asserted the same position in his replying affidavit sworn on even date. He went on to state that the Ruiru Plots belonged to their father and devolved to the deceased upon his demise. He further stated that their father had intended to register KIN and the name was reserved. The Administrator stated that there was no intention to disown the purchasers. Further that it was agreed that Eunice who acted as their father's secretary was most suited to handle the purchasers once the administration is concluded, to complete the formal subdivision with the Lands department and the sale of the plots, which the deceased had not done. The Administrator urged that the protest be struck out with costs given that the claim that the Protestors purchased land from the deceased cannot hold.
4. Parties filed their written submissions which I have duly considered. I will adopt the issues for determination set out by the Protestors as follows:
 - i. Whether the Protestors are entitled to the Ruiru Plots as creditors.



- ii. Whether the Ruiru Plots form part of the estate of the deceased having been sold.
5. Rule 40(6) of the *Probate and Administration Rules* provides:
- Any person wishing to object to the proposed confirmation of a grant shall file in the cause in duplicate at the principal registry an affidavit of protest in Form 10 against such confirmation stating the grounds of his objection.
6. The language used in the above provision is clear that an affidavit of protest may be filed by any person wishing to object to the proposed confirmation of a grant. The import of Rule 40(6) is that one need not be a beneficiary of the estate in order to file an affidavit of protest as suggested by the Administrator. All that is required is a desire to object to a proposed confirmation. The Petitioners object to the proposed mode of distribution on the basis that they purchased resultant plots from the subdivision of the Ruiru Plots, from the deceased. Accordingly, they fall within the meaning of any person in Rule 40(6) and are within their right to challenge the proposed confirmation, as they have. Accordingly, the preliminary objection that is anchored on the contention that the Protestors are not beneficiaries of the estate is without merit.
7. The Protestors submitted that the plots in question were purchased from KIN, an entity ran by the deceased, prior to her demise, a fact acknowledged by the Administrator. Each purchaser was issued with a land share certificate in the name of KIN. The Protestors argue that having purchased the plots prior to the demise of the deceased, they are creditors to the estate. In view of this, the Administrator has a duty to clear the debts owed by the estate prior to confirmation and distribution. They further contended that the deceased and the Administrator held the Ruiru Plots as trustees and that the Administrator ought to facilitate the transfer of the same to the Protestors.
8. The Administrator disagrees. He submitted that the deceased died in 2010. Of the exhibited land certificates, 10 are dated post the demise of the deceased. Accordingly, the same cannot form the basis of the protest. The Administrator contended that the property belonged to their late father and therefore the sale of the subdivisions under certificates issued from 1996 cannot be attributed to the deceased.
9. I have looked at each of the land share certificates and receipts exhibited by the Protestors. They are all issued by Kuru Investments Network Limited in respect of subdivisions of the Ruiru Plots.
10. The land share certificates and receipts indicate that the following Protestors purchased their plots in diverse years between 1996 and 2006, before the demise of the deceased:
- Moses Mwangi – Plot No 8A
- Maria Wanja Wambua – Plot No 13A
- Henry Kubai Isaack, Maria Wanja Wambua – Plot No 4A
- Samuel Wanjohi Gikonyo – Plot No 23A
- Anton Muiru Kamau – Plot No 28A
- Samuel Wanderi Heta -- Plot No 14A
- Joyce Wairimu Kamau – Plot No 31A
- Peter Mureithi Macharia – Plot No 24A
- James Kabithi Njuguna -- Plot No 5A
- Peninah Warura Mwangi, Joseph Mbuuri Stanley Ndungu Kiguru – Plot 9A



Monica Wanjiru Waweru -- Plot No 29A

Jacquiline Njoki Muriu – Plot No 33A

11. The receipts for the amount paid by James Thuku were issued on December 23, 1996. The plot number is however not indicated. Ruth Wambui Kareri purchased Plot 34A. However, the year on the land share certificate is not legible.
12. Our superior Courts have had occasion to consider claims by protestors, challenging confirmation of grants of representation. In the case of *Jennifer Wangui M'maitima v George Mutwiri M'twamwri & another* [2015] eKLR, relied on by the Protestors, the Court stated:

20. The protestors counsel referred to the case of *Alibhai & others v Karia & Another* (1995-98) 2 EA 9 where it was held:-

“Upon the signing of a contract of sale of interest in land, the vendor becomes a trustee holding property for the purchaser who becomes the beneficial owner thereof.”

13. The Court went on to state:

My view is that upon the deceased surrendering the title deed to the protestors, putting them into possession of the land, processing the application for consent to the Land Control Board and watching/allowing protestors from 1982 to the time he died in 1990 without interfering with their sole use and occupation meant that though the deceased was registered proprietor of the suit land and though he had not transferred the land pending resolution of the boundary dispute with PWS's family, which dispute is still pending to date, the moment he did so, he became a trustee to the protestors and was holding the land up to the time of his death as trustee for the protestors who had by virtue of the aforesaid acts become beneficial owners thereof and the said property ceased to be a free property which could be administered and transferred to any other deceased beneficiary.

14. In the present case, the Protestors assert that they purchased the plots from the deceased through KIN, which the Administrator admitted was an entity their late father intended to register. The plots purchased are subdivisions of the Ruiru Plots which devolved to the deceased from the estate of her late husband. The Administrator has admitted that the Protestors purchased plots and even stated that the family had no intention of disowning the Purchasers. The Court notes that KIN as an unregistered entity had no legal authority or capacity to enter into contracts with the Protestors and receive payment from them. However, it would be unjust to condemn the unsuspecting purchasers who were not aware of the legal status of KIN. Accordingly, I would find that the Administrator who has stepped into the shoes of the deceased is a trustee holding the Ruiru Plots in trust for the purchasers. In light of this, I am satisfied that the Protestors have made a case that those among them whose land share certificates predate the demise of the deceased, are indeed creditors of the estate.

Whether the Ruiru Plots form part of the estate of the deceased having been sold

15. It is the Protestors case that the Ruiru Plots do not form part of the estate of the deceased having been sold to them. Though the Administrator stated that there was no intention to disown the purchasers, he argued that there were those whose land share certificates were issued after the demise of the deceased. He also urged that the Protestor's claim lay in the Environment and Land Court and not in this Court.



16. Section 3 of the Act defines the estate of a deceased intestate available for distribution as follows:

“net intestate estate” means the estate of a deceased person in respect of which he has died intestate after payment of the expenses, debts, liabilities and estate duty set out under the definition of “net estate” so far as the expenses, debts, liabilities and estate duty are chargeable against that estate;

17. As indicated earlier the Court has found that some Protestors are creditors of the estate. As personal representative of the deceased, the Administrator has a duty after getting in all the free property of the estate of the deceased, to ascertain and pay all her debts. Section 83 provides in part:

Personal representatives shall have the following duties-

(b) to get in all free property of the deceased, including debts owing to him and moneys payable to his personal representatives by reason of his death;

(d) to ascertain and pay, out of the estate of the deceased, all his debts;

18. It is only after settling all the debts of the deceased that the Administrator may proceed to distribute the remaining estate to the beneficiaries. This is what Section 83(f) requires of administrators:

subject to section 55, to distribute or to retain on trust (as the case may require) all assets remaining after payment of expenses and debts as provided by the preceding paragraphs of this section and the income therefrom, according to the respective beneficial interests therein under the will or on intestacy, as the case may be;

19. It is not disputed that some of the Protestors as indicated, purchased plots being subdivisions of the Ruiru Plots from the deceased or from her late husband. Having done so, they became beneficial owners of the said plots. My finding, as in the Jennifer Wangui M’aitima case (supra), is that although the deceased had not transferred the plots to the Protestors at the time of her demise, the said plots became encumbered, and ceased to form part of the free estate of the deceased. They are thus not available for distribution to the Eunice as proposed or to any other beneficiary of the estate.

20. In the cases of In re Estate of Tumbo Lavu (Deceased) [2021] eKLR and In re Estate of Nason Musembi Musomba (Deceased) [2018] eKLR, the Court left out properties from the distribution list on account of a challenge that was successfully mounted by protestors therein. Similarly, in this case, the Ruiru Plots may not be distributed until the liability of the estate to the Protestors is settled.

21. I now turn to those Protestors whose land share certificates indicate that they purchased plots after the demise of the deceased. It is the Administrator’s averment that Eunice continued with the business of selling the plots after the demise of the deceased. The Protestors who purchased plots from Eunice after 2010 cannot be said to be creditors of the estate and may only pursue their claim from Eunice. Such claim cannot be made in this succession Court but in the Environment and Land Court which has exclusive jurisdiction by dint of Article 162(2) of the Constitution of Kenya, 2010.

22. In the end, I make the following orders which are necessary for the ends of justice:

i. The summons for confirmation of grant dated April 14, 2021 shall proceed to hearing on a date to be given by the Court.

ii. The Protestors who purchased subdivisions of Title No Ruiru/Ruiru East Block 2/931 and Title No Ruiru/Ruiru East Block 2/932 before the demise of the deceased on May 8, 2010



are creditors of the estate and shall have their respective plots indicated in the certificate of confirmation of grant.

iii. Each party shall bear own costs.

DATED, SIGNED AND DELIVERED IN NAIROBI THIS 30TH DAY OF SEPTEMBER, 2022

M. THANDE

JUDGE

In the presence of: -

..... **for the Administrator**

..... **for the Protestor**

..... **Court Assistant**

