



**In re Estate of Burton Kamau Thuri (Deceased) (Succession Cause 488 of 2001)
[2022] KEHC 13161 (KLR) (Family) (26 September 2022) (Ruling)**

Neutral citation: [2022] KEHC 13161 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 488 OF 2001
AO MUCHELULE, J
SEPTEMBER 26, 2022
IN THE MATTER OF THE ESTATE OF BURTON KAMAU THURI (DECEASED)**

BETWEEN

BETH NJERI KAMAU 1ST APPLICANT

JANE WANGARI KAMAU 2ND APPLICANT

AND

HELLEN NJUGUINI KAMAU 1ST RESPONDENT

DAVID NG'ANG'A KAMAU 2ND RESPONDENT

REUWEL THURI KAMAU 3RD RESPONDENT

VIRGINIA WANJIRU KAMAU 4TH RESPONDENT

RULING

1. The deceased Burton Kamau Thuri died intestate on 3rd November 2000. He was survived by two widows: Naomi Wairimu and Virginia Wanjiru Kamau (4th respondent). Each house had children. The widows petitioned for the grant of letters of administration intestate. The grant was issued to them on March 20, 2002, and confirmed on June 8, 2005.
2. The deceased left several parcels of land, shares in companies, rental income, money in banks and motor vehicles. All these were shared between the two widows. In respect of the parcels of land, the certificate of confirmation indicated that each widow was to have a life interest in what was allocated. Upon her death the allocated portion was to be shared equally among the beneficiaries (the children) in her house. Virginia Wanjiru Kamau (4th respondent) and her child Reuwel Thuri Kamau (3rd respondent) represented the 2nd house in the certificate of confirmation.



3. The applicants Beth Njeri Kamau and Jane Wangari Kamau are some of the children from the house of Naomi Wairimu Kamau (1st house). They are sisters of the 1st and 2nd respondents. Their mother died on June 23, 2017. They filed the present summons dated December 9, 2019 seeking the revocation of the grant and certificate of confirmation issued to the respondents and that, in the place of the respondents, the court does appoint suitable administrators to complete the administration of the estate. They complained that the respondents had failed to complete the administration of the estate, had failed to allocate and transfer to them their respective shares of the estate and had failed to account to them regarding the administration of the estate. The application was filed under sections 35, 40 and 76(d) of the *Law of Succession Act* (cap 160). Their case was that following the death of their mother her life interest was determined pursuant to section 35 of the *Act* and the beneficial interests of the children of the house, including them, became crystallised. They complained that since the death of their mother the respondents had not transmitted their respective shares, had kept them in the dark and had failed to account to them.
4. The 1st respondent filed a response contained in the replying affidavit sworn on February 28, 2020. She stated that since the death of their mother, her siblings, the applicants included, have been uncooperative and unwilling to either convene or attend family meetings to agree on who gets what from the estate of the deceased. She blamed the 2nd respondent, her brother, whom she said was fuelling trouble in the family, and also because he was the custodian of most of the title documents which he was unwilling to avail to the administrators to be able to undertake the completion of the administration of the estate. She opposed the application.
5. The 3rd respondent filed a replying affidavit sworn on February 27, 2020 to state that there was a court order that the 1st house would get 2/3 of the estate and the 2nd house would get 1/3 of the estate. Following that all the beneficiaries held a meeting on February 10, 2012 (whose minutes he annexed as “RTK 1”) where an agreement was reached on how to share the estate. The 2nd house entered their own agreement following the family meeting on 20th August 2017 (RTK 3”). The money in the banks was shared in the ratio of 2/3 to the 1st family and 1/3 to the 2nd family. Each beneficiary got his/her entitlement. As for the immovable properties, each beneficiary has taken possession of his/her portion but transfer has not been done because of non-cooperation of some of the family members. He asked the court to ask the deputy registrar to sign for those not cooperating. He stated that title documents for Loc. 1/Kiriani/738 was missing and that has delayed the transmission. The respondent pleaded for more time to be able to complete the administration.
6. The applicants did not challenge the averment that the administrators have distributed all the money in the banks. They further did not challenge the averment that, for the 1st house, a family meeting to share the parcels of land due to the house has been difficult to either convene or attend. On their part, they did not say that they have made any effort to either convene or attend a family meeting to discuss the sharing of the estate due to their house. I say this while acknowledging that the responsibility to distribute the estate and to account to the court and the beneficiaries regarding the distribution belonged to the administrators.
7. I reiterate that the certificate of confirmation showed how the estate of the deceased was to be shared. Any variation should have the authority of the court. No such authority has been sought or obtained.
8. If any person has stood in the way of distribution of the estate of the deceased, the administrators ought to have come to court for appropriate orders. No such application has been made.
9. It would appear that the 1st house is the one not agreed on how to share the estate. What is, however, certain is that, following the death of Naomi Wairimu Kamau, her life interest came to an end and the



benefits of the children of her house crystallised. The good thing is that each beneficiary was to get an equal share of what his/her mother held on their behalf in the estate.

10. It is notable that even where the parties were sent to court annexed mediation they were unable to reach an agreement.
11. So that the estate of the deceased can be fully and expeditiously distributed, I make the following orders:-
 - a. I appoint the deputy registrar of the court to work with the administrators to sign whatever documents on behalf of the unwilling administrator and/or beneficiary to realise the distribution of the estate as contained in the certificate of confirmation;
 - b. the distribution be finalised within 90 days from today, and a report be filed into court of the same;
 - c. if within 21 days from today, either David Ng'ang'a Kamau or any other beneficiary refuses to produce any title documents or other document relating to the property in the estate of the deceased, the Land Registrar shall cancel such document and proceed to transmit the respective parcels to the beneficiaries and issue title deeds, as may be necessary;
 - d. the expenses required to distribute the estate shall be borne by the estate;
 - e. this matter shall be mentioned on February 1, 2023 to confirm.

DATED AND DELIVERED AT NAIROBI THIS 26TH SEPTEMBER 2022.

A.O. MUCHELULE

JUDGE

