



**In Re Estate of Ibrahim Mucheru Wahiothi (Deceased) (Succession Cause 585 of 2016) [2022] KEHC 13098 (KLR) (Family) (26 September 2022) (Ruling)**

Neutral citation: [2022] KEHC 13098 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
SUCCESSION CAUSE 585 OF 2016  
AO MUCHELULE, J  
SEPTEMBER 26, 2022  
IN THE MATTER OF THE ESTATE OF IBRAHIM  
MUCHERU WAHOTHI (DECEASED)**

**BETWEEN**

**ESTHER WANJIKU MUCHERU ..... APPLICANT**

**AND**

**JOHN WARUI JOAKIM KAGWATHI ..... 1<sup>ST</sup> RESPONDENT**

**ANNE NYATHIRA MUCHERU ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. The deceased Ibrahim Mucheru Wahiothi died testate on September 5, 2013. His written will was dated December 6, 2005. The executors of the will are the respondents Anne Nyathira Mucheru and John Warui Joakim Kagwathi. They obtained a grant which was confirmed on November 15, 2021.
2. The deceased was survived by five (5) households. The applicant Esther Wanjiku Mucheru is the deceased's second widow. She filed the present application dated January 31, 2022 seeking the following orders:-
  - “1) That the summons/application herein be certified as urgent and be heard *ex parte* in the first instance.
  - 2) That the respondents produce to this honourable court a full and accurate inventory of the assets of the deceased's estate.
  - 3) That all logbooks and title deeds listed in the will dated December 6, 2005 together with any title deed that is a subdivision of the properties listed in the



said Will be deposited/produced to court pending hearing and determination of the summons/application herein.

- 4) That forthwith the Deputy Registrar facilitates distribution of the estate herein to all the beneficiaries/houses as per the deceased's herein declared wish in the will dated December 6, 2005 or as the honourable court deems appropriate and just.
- 5) That the costs of the application be borne by the respondents.”

The application was opposed by the respondents.

3. It is important to point out that, following the death of the deceased, there was a dispute regarding the place of burial. The dispute was in HCCC No 25 of 2013 at Nairobi. It was finally resolved by the Court of Appeal in Civil Appeal No 68 of 2015. There was also CM Criminal Case No 5460 of 2013 at Makadara in which the 1<sup>st</sup> respondent was alleged to have forged the deceased's Will. He was acquitted of the charge. The grant was subsequently confirmed by consent.
4. The applicant's complaint in the application is that she is in her eighties and that the respondents are refusing to distribute the estate of the deceased so that she benefits from her share in accordance with the will; that each house should contribute Kshs 140,000/= towards it. The respondents want the issue addressed first before the distribution of the estate can begin. The applicant's case is that the issue of the funeral expenses should not stand in the way of the distribution of the estate of the deceased. She states that she should get part of her estate, and from that she can pay Kshs 140,000/= that is being sought.
5. Her second issue is that parcels Ndarugu/Gakoe/598 and Chania/Kanyoni/1292, both being part of the estate of the deceased, have been leased out by the respondents to persons who have planted pineapples, and that they are the ones benefitting from the proceeds to the exclusion of the other beneficiaries. This is part of the reason why she wants accounts.
6. The respondents state that, following the Court of Appeal decision, the rest of the houses refused to pay the funeral expenses which forced the 1<sup>st</sup> respondent to bear the cost above. They want reimbursement. They did not address the issue of having rented out part of the estate. They also did not address the request for accounts. On the issue of the distribution of the estate, this is what they stated:-

“ 11. That we have no desire to thwart the distribution of the estate but the applicant should pay their debt so as to have affairs to the estate lawfully completed without necessity for further litigation.”

7. The deceased left a substantial estate, and in it the deceased was quite clear on what each widow and her children would receive upon his death. Most of the property comprised parcels of land. The deceased indicated to whom each parcel would go. The certificate of confirmation has mirrored what the will indicated. The respondents, as the executors of the will, should not find it difficult to distribute the deceased's estate.

8. The Court of Appeal directed that –

“(c) The funeral expenses, including the mortuary charges shall be borne by the family members but can be treated as a debt from the deceased estate.”

One, the Kshs 700,000/= has to be justified. Secondly, the estate has had rental and other income and money in banks. The respondents have leased part of the estate. There was sufficient income to cover any justified burial expenses. In



any case, the Court of Appeal decision and the *Law of Succession Act* (Cap 160) would have justified their paying any justified funeral expenses, and thereby distributing the rest of the estate to the beneficiaries, them included. Section 83(a) of the Act empowered the respondents – to provide and pay out of the estate of the deceased, the expenses of a reasonable funeral for him.”

9. The grant to the respondents was confirmed on November 15, 2021. This application was brought on January 31, 2022. Under section 83(g) of the Act, the completion of the administration of the estate of the deceased was required to be done within 6 months, and thereafter the respondents to produce to the court a full and accurate account of the completed administration. The application did not wait for the expiry of the six months before a complaint was raised about the completion of the administration of the estate.
10. However, section 83(h) of the Act provides that the respondents are required to produce to the court, if required by the court, either of its own motion or on the application of any interested party in the estate, a full 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. The applicant is a beneficiary of the estate of the deceased. She has a legitimate interest to know how the estate is being dealt with by the respondents who are the executors of the deceased’s will, and have a grant.
11. That being the case, and considering the application and the provisions of section 47 of the Act and rule 73 of the *Probate and Administration Rules*, in effort to make sure that the estate of the deceased who died on September 5, 2013 has been distributed to the respective beneficiaries, I make the following orders:-
  - (a) within 90 days from today the respondents shall distribute all the land properties to the respective beneficiaries in accordance with the certificate of confirmation, and if that is not done the Deputy Registrar of this court shall sign all the necessary papers and documents to ensure that the parcels of land are transferred to the beneficiaries;
  - (b) upon the expiry of the 90 days the respondents shall file and serve an affidavit of a full and accurate inventory of all the assets and liabilities of the estate and a full and accurate account of their dealings with the estate, including information regarding the transferred estate to the beneficiaries;
  - (c) the account shall include both settled and unsettled debts, and proposal on how to settle them; and a statement of the assets that have generated income since the death of the deceased and where the income is and/or has been applied;
  - (d) the inventory and account of the assets that will not have been distributed by the end of the 90 days and a proposal of how it will be distributed in accordance with the certificate of confirmation; and
  - (e) upon the service of the affidavit, the applicant or any other beneficiary shall be at liberty to respond within 21 days.
12. The cause shall be mentioned on January 30, 2023 for further directions. Costs shall be borne by the respondents.

**DATED AND DELIVERED AT NAIROBI THIS 26<sup>TH</sup> DAY OF SEPTEMBER 2022.**

**A.O. MUCHELULE**

**JUDGE**

