



REPUBLIC OF KENYA



KENYA LAW
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In re the Estate of Mary Karugi Mwangi (Deceased) (Succession Cause 97 of 2017) [2022] KEHC 13070 (KLR) (22 September 2022) (Ruling)

Neutral citation: [2022] KEHC 13070 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
SUCCESSION CAUSE 97 OF 2017
MM KASANGO, J
SEPTEMBER 22, 2022
IN THE MATTER OF THE ESTATE OF MARY KARUGI MWANGI (DECEASED)**

RULING

1. The deceased, in this cause, is Mary Karugi Mwangi (deceased).
2. A petition for grant of letters of administration intestate was filed in this cause, on July 5, 2017 by James Mugi Mwangi (James), George Gathumbi Mwangi (George) and Muthoni Mwangi (Muthoni) who described themselves as sons and the latter as the daughter of the deceased.
3. The Chief's letter dated June 2, 2016 listed the following as surviving the deceased, that is:-James Mugi MwangiGeorge Gathumbi MwangiGathoni MwangiNjeri MwangiCarole Nduta Mwangi
4. The Chief's letter and indeed, the petition for grant of letters of administration intestate, failed to disclose that there was another son who predeceased his mother the deceased in this action namely, Renny Maina Mwangi (deceased). The children of Renny Maina Mwangi (deceased) filed an answer to the petition and petition by way of cross petition objecting to the petition field and seeking that their cross petition be allowed.
5. Justice C. Meoli by a Ruling dated September 24, 2018 dismissed both answer and cross petition. That Ruling paved the way for grant to be issued. The learned judge in concluding a well-reasoned Ruling stated thus:-

“ 32. The Petitioners' brother Renny Maina Mwangi predeceased their intestate mother but this pertinent and material fact was not disclosed in the petition. It seems from the arguments raised by the Petitioners that they believe their deceased brother does not count in these proceedings, allegedly because he had benefitted from his mother's estate while alive. Whether true or not, the matter is neither here nor there; deceased or not, the law requires disclosure of children of the deceased. Besides, the question whether any assets are due to his estate under these proceedings is a matter to be determined during the distribution of the estate, and cannot be used to disqualify bonafide members of the family



of Renny Maina Mwangi from claiming as persons entitled as beneficiaries, or be used as justification for non-compliance with Section 51(2)g of the Law of Succession Act.”

6. The wife of Renny Maina Mwangi (deceased), namely, Jane Wairimu Munge(Jane), appointed the law firm of Judy Thongori & Co. Advocates to represent her in this cause, and that law firm filed notice of appointment dated August 24, 2020.
7. Despite Jane appointing an advocate to represent her in this cause, and despite clear pronouncement by Justice C. Meoli by the learned judge’s Ruling, the administrators James, George and Muthoni filed summons for confirmation of grant dated February 10, 2020, without notice to Jane.
8. Jane has filed two affidavits in response to that summons for confirmation of grant. By her affidavit, she has two major complaints that is that although the administrators have distributed one property to her though her deceased’s husband the value of that property and of those others assets of this estate is unknown. Jane’s further complaint is that some of the businesses of the deceased were being distributed to Kiragu Holdings Limited and yet it had not been disclosed the shareholders of that company there was non-disclosure of who was benefiting from those assets.
9. On May 25, 2021 the matter of the confirmation of grant and the affidavits by Jane were before court. On that day, learned counsel for the administrators informed the court that the parties were negotiating, which negotiations were in advanced stage. This statement surprised learned counsel for Jane since she said she was unaware of that negotiations she however relented and conceded to an adjournment. The matter was next before court on April 26, 2022. On this occasion, one year since the court was informed there were negotiations going on, the learned counsel for the administrators stated:-

“We are yet to reach consent. This is a complex matter but we are making head way as we negotiate.”
10. That statement took learned counsel for Jane by surprise. That counsel said that administrator’s counsel had made similar statement previously. She implicitly denied there was such negotiations going on.
11. On that day I directed that I would deliver a Ruling, this Ruling since the administrators had not filed affidavit in response to Jane’s affidavit and there seemed not to be evidence of negotiation going on.

Discussion and Determination

12. The estate of the deceased is indeed vast. It has several immovable properties businesses, bank account amongst others. The complaint by Jane that distribution of the estate was done without availing valuation report is a valid complaint. How else will this Court comply with the provisions of Section 38 of the Law of Succession Act, Cap 160. That Section provides:-

“Where an intestate has left a surviving child or children but no spouse, the net intestate estate shall, subject to the provisions of sections 41 and 42, devolve upon the surviving child, if there be only one, or shall be equally divided among the surviving children”.
13. It is necessary for this Court to know the net estate of the deceased see the case of In re Estate of Johnson Omae Aburi(Deceased) 2022 eKLR.



14. This Court will therefore require the immovable properties, the companies and shares be valued. The court will require bank statement on all the deceased's accounts starting from August 28, 2017, the date when the limited grant of letters of administration *ad colligenda bona* was issued. Those accounts will cover August 28, 2017 upto the date filed. The administrators shall provide those accounts and statement of expenses and supporting documents through an affidavit.

Disposition

15. The order of this Court are as follows:-

- a. All the properties of the deceased shall be valued within 30 days from today. Both sides shall consult and agree on the valuer/s to be appointed. The costs of the valuation shall be borne by the estate.
- b. The administrators shall file and serve an affidavit within 45 days from today and shall provide through that affidavit:-
 - i. Value of the share of deceased.
 - ii. Value of the companies of the deceased.
 - iii. Bank statements of all deceased accounts starting from 28th August, 2017 upto date.
 - iv. The administrator's statement of accounts of income and expenses and supporting documents.
- c. At the reading of this Ruling, a date will be given for further directions, if any.
- d. Each party is at liberty to file skeleton submission and/or affidavit in respect of distribution of the estate.
- e. This court shall decide on who bears the cost once the final decision is made on distribution that is, on confirmation of the grant.

RULING DATED AND DELIVERED AT KIAMBU THIS 22ND DAY OF SEPTEMBER, 2022.

MARY KASANGO

JUDGE

In the presence of

Coram:

Court Assistant : Mourice

For Administrators: - James Mugi

George Gathumbi N/A

Muthoni Mwangi

For Respondents:- Jane Wairimu Munge :- Ms. Kiarie

Ruling delivered virtually.

MARY KASANGO

JUDGE

