



REPUBLIC OF KENYA



**In re Estate of Peterson Appolos Karani (Deceased) (Succession Cause
748 of 2011) [2022] KEHC 14550 (KLR) (Family) (31 October 2022) (Ruling)**

Neutral citation: [2022] KEHC 14550 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

FAMILY

SUCCESSION CAUSE 748 OF 2011

AO MUCHELULE, J

OCTOBER 31, 2022

**IN THE MATTER OF THE ESTATE OF PETERSON
APPOLOS KARANI (DECEASED)**

BETWEEN

MONICAH NJERI KARANIA APPLICANT

AND

JANE LUCY WAIRIMU KARANI RESPONDENT

RULING

1. The deceased Peterson Appolos Karani died intestate on January 19, 2011. He left two widows: the respondent Jane Lucy Wairimu Karani and the applicant Monicah Njeri Karani. The children of the respondent are Anthony Gakuhi Karani, Samantha Wabia Karani, Christine Wanjiku Karani, Lilian Njamiu Karani and Michael Charles Karani. The children of the applicant are Simon Maina Karani and Dickson Kamau Karani.
2. The respondent and the applicant are the joint administratrices of the estate of the deceased, having been issued with the grant on January 23, 2020. The grant is yet to be confirmed.
3. In the application dated April 22, 2022 the applicant alleged that the respondent and her children have taken charge and control of the following properties of the deceased which are generating income and which they are solely collecting and not accounting and have changed their ownership to themselves:
 - a. Kayole Plot No (A3 – 442 Kayole);
 - b. Kayole Plot (A 4-632 Kayole);
 - c. Plot No 1303 – Dandora;



- d. Plot No C5-331 Kayole;
 - e. Y28 Sharp Corner Dandora;
 - f. Dandora Plot (E – 1614 Dandora);
 - g. 3000 Tea Bushes – Kiamwangi Karatina/590; and
 - h. KCB Accounts 110xxxxx76, 04711xxxxx28 and 103xxxxx47.
4. The application sought that the respondent and her children be restrained from intermeddling with the estate property by continuing to collect rent from the property until the suit is heard and determined; she and her children be restrained from entering Plot No Kayole Plot (C5-331 Kayole) that constitutes the applicant’s matrimonial home and Plot No Kayole Plot (A3-442) that belongs to Simon Maina Karani, that the change of ownership of the deceased’s property namely Plot No C5 – 331 Kayole be cancelled and put into the applicant’s name; and Plot No Kayole Plot (A3 – 442) be changed into the name of Simon Maina Karani; the respondent and her children be committed to civil jail if they do not do the above; and, in default, all the property above, except Kayole Plot A3-442 Kayole and Kayole Plot C5-331, Kayole be jointly managed by the two administratrices.
5. The respondent’s response was that Kayole Plot A3-442, A4-632, C5-331 and Dandora Plot E-1614 were not the properties of the deceased at the time of his death and therefore do not constitute the deceased’s estate property. As for the tea bushes payments, she stated that following the applicant’s letter marked “B” the KTDA had since 2011 withheld any payments. She listed the deceased’s estate to comprise:-
- a. Naromoru/Block 1/Ragati/104;
 - b. Plot No 366 – Kantafu Phase II;
 - c. Plot No 1325 – Kantafu Phase 8;
 - d. Commercial Share Certificate No. B05056;
 - e. KTDA Farmers Co Ltd Share Certificate No 16xxx;
 - f. Founder Share Certificate No A0xxx; and
 - g. KTDA Growers No RGxxxxx99.

Lastly, she stated that Kayole Plot No C5 – 331 belonged to Clarice Adhiambo and Kayole Plot No A3 – 442 belonged to David Githaiga Wangai, and annexed documentation.

6. The applicant swore a further affidavit to state that, in the respondent’s affidavit of protest dated June 9, 2022 she had stated that Kayole Plots A3 – 442 and C5 – 331 belonged to her, and now she was saying that they belonged to other people. She had stated that she and the deceased had jointly owned Dandora Phase 5 Plot No E 1303 which they had built together; she knew nothing about Plots Kayole No 366 Phase 2, Dandora Plot No 1303, Plot No 1614, Plot No Y28 Serial No 015 Sharp Corner and Kenyatta Phase 7; that Kantafu Plot No 366 phase 2 and Plot No 1325 phase 8 were empty plots which earned no income.
7. The applicant made reference to P & A 5 which the respondent had sworn on March 11, 2011 in support of her petition for the grant of letters of administration in which she had named the following properties as forming the estate of the deceased:-

- “ a) Kayole Plot (A3-442 Kayole);



- b) Kayole Plot A4-632 Kayole);
- c) Dandora Plot (E – 1303 Dandora);
- e) Kayole Plot (C5-331 Kayole);
- f) Naromoru/Block 1/Ragati/104;
- g) KTDA A/C Grower No RG 021 0XXX XX23;
- h) KCB A/C No 11XXXXXX28;
- i) Ragati Tea Factory Co Ltd – shares; and
- j) Kenya African National Traders and Farmers Union – share.”

She (the applicant) deponed that the respondent was bound by that pleading regarding what constituted the deceased’s estate.

8. Under sections 45, 82 and 83 of the *Law of Succession Act* (Cap 160), all the free property of the deceased are supposed to be in the possession of, and administered by, the administrators of his estate to the exclusion of all other people, and it is criminal for any other persons to intermeddle with any of these properties:-

- “a) Kayole Plot (A3-442 Kayole);
- b) Kayole Plot A4-632 Kayole);
- c) Dandora Plot (E – 1303 Dandora);
- e) Kayole Plot (C5-331 Kayole);
- f) Naromoru/Block 1/Ragati/104;
- g) KTDA A/C Grower No RG 021 0XXX XX23;
- h) KCB A/C No 11XXXXXX28;
- i) Ragati Tea Factory Co Ltd – shares; and
- j) Kenya African National Traders and Farmers Union – share.”

9. Any disputes regarding what constitutes the estate of the deceased shall be heard and determined during the application for the confirmation of the grant under section 71 of the Act. However, the respondent is bound by her pleading contained in P & A 5 regarding what property constitutes the estate of the deceased, and cannot be allowed to resile from it. The property is supposed to be jointly administered by the applicant and the respondent, and any income should go to a joint account that they will open for that purpose.

10. Consequently, I make an order that the following properties contained in P & A 5 paragraph 5 shall jointly be administered by the applicant and the respondent: -

- “a) Kayole Plot (A3-442 Kayole);
- b) Kayole Plot A4-632 Kayole);
- c) Dandora Plot (E – 1303 Dandora);



- e) Kayole Plot (C5-331 Kayole);
- f) Naromoru/Block 1/Ragati/104;
- g) KTDA A/C Grower No RG 021 0XXX XX23;
- h) KCB A/C No 117XXXXXX28;
- i) Ragati Tea Factory Co Ltd – shares; and
- j) Kenya African National Traders and Farmers Union – share.”

11. All the proceeds of rent income or tea income shall be deposited into a joint account to be opened and operated by the two administratrices. Such account should be opened within 30 days from today.
12. Within 60 days from today, the respondent shall file and serve an affidavit of inventory and account of all the assets and income of the deceased from the time of the filing of the petition of letters of administration to date, and how the income has been applied. On service, the applicant shall have 21 days to respond.
13. The application dated April 22, 2022 is allowed in those terms. Costs shall be in the cause.
14. This matter shall be mentioned on February 27, 2023 for further directions.

DATED AND DELIVERED ELECTRONICALLY AT NAIROBI THIS 31ST DAY OF OCTOBER 2022

A.O. MUCHELULE

JUDGE

