



REPUBLIC OF KENYA



In re Estate of Charles Muritu Gacheru (Deceased) (Succession Cause 25 of 2016) [2022] KEHC 15758 (KLR) (17 November 2022) (Ruling)

Neutral citation: [2022] KEHC 15758 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
SUCCESSION CAUSE 25 OF 2016
RB NGETICH, J
NOVEMBER 17, 2022
FORMERLY NAIROBI SUCC CAUSE NO 2639 OF 2014**

RULING

1. The application before this court for determination dated September 20, 2021, seeks the following orders:-
 1. Spent.
 2. The application for revocation dated September 5, 2014 be settled as follows:
 - a. That the administrator Hottensiah Wamoro Muritu now deceased be substituted with James Mbugua Muritu and Evans Njenga Muritu as administrators of the estate of the late Charles Muritu Gacheru.
 - b. The court to review the court orders of October 2, 1992 in respect of the distribution of the deceased's estate following the demise of Hottensiah Wamoro Muritu and the estate be distributed as follows;
 - i. LR 150/36 – Esther Wambui Muritu
 - ii. LR 150/42 – Peter Nganga Muritu
 - iii. LR 150/43 and 150/45- James Mbugua Muritu
 - iv. LR 150/44 - Evans Njenga Muritu
 - v. LR 150/46
 1. Parcel B - Charles Njenga Muritu, James Mbugua Muritu and Evans Njenga Muritu to hold in trust for Mary Wanjuhi Njoroge, Evans Njenga Muritu, James Mbugua Muritu, Miriam Njeri Mohammed, Esther Wambui Muritu, Peter Ng'ang'a Muritu and Charles Njenga Muritu.
 2. Parcel C - Mary Wanjuhi Njoroge.



3. Parcel D - Miriam Njeri Mohammed
 - a. That Succ Cause No 505 of 2013 be marked withdrawn with no orders as to costs.
 - b. Each party to bear their costs.
2. The application is premised on the grounds that Hottensiah Wamoro Muritu was appointed as an administrator of the estate Charles Muritu Gacheru on September 18, 1992. She died on July 30, 2012. The only assets remaining for distribution are LR 150/13 (original 150/2/1 Riara Ridge) which has been sub-divided to create the following plots: LR 150/36, LR 150/39, LR 150/42, LR/ 43, LR 150/44, LR 150/45, and LR 150/46. Further parcel No LR 150/46 is subdivided further into three plots B, C, and D while parcel B hosts the deceased homestead and the burial site which is to be held in trust for all other beneficiaries by Charles Njenga Muritu, James Mbugua Muritu and Evans Njenga Muritu.
3. The application is supported by the annexed affidavit of James Mbugua and Evans Njenga Muritu. They averred that the beneficiaries have consented to the mode of distribution but Hottensiah Wamoro died before all the property of the deceased had been transmitted to the beneficiaries.

Affidavit Of Protest

4. In response to the application, Mirima Njeri Mohamed filed an affidavit of protest on April 5, 2022 sworn on March 31, 2022 in which she averred that she is not in agreement with the mode of distribution as the same is unfair. She stated that she was not consulted on the proposed mode of distribution. She further stated that prior to his death, her deceased father had divided the property known as LR 150/13 (original 150/2/1 Riara Ridge) to create the following plots: LR 150/36, LR 150/39, LR 150/42, LR/ 43, LR 150/44, LR 150/45, and LR 150/46.
5. She contends she is not aware when the property known as LR 150/46 was further subdivided into plots No B, C, and D. She urged the court not to allow the distribution as proposed. In her further affidavit filed on June 6, 2022, she averred that she is partially opposed to the mode of distribution as the acreage is not in equal shares; the applicants are getting a larger share compared to other beneficiaries and stated that the proposed mode of distribution is inequitable. She contends she and her sister have been given a small share as compared to the applicants. She further urged the court to include her to hold in trust the property known as No LR 150/46 parcel B to ensure gender equality.
6. She urged the court to consider the issue of the acreage before distributing the property as proposed by the applicants. She stated that there is a need for a surveyor to re-establish the beacons as the original beacons have been removed.

Petition For Letters Of Administration

7. Consequentially, James Mbugua and Evans Njenga filed a petition for letters of administration of the estates of Charles Muritu Gacheru on May 26, 2022, in which they sought the grant in their capacity as sons of the deceased. The grant was issued to Hottensiah who is since dead and the estate is still pending transmission to the beneficiaries.

Supplementary Affidavit

8. The applicants herein filed the supplementary affidavit on July 6, 2022. The applicants averred that the protestor was represented by counsel and was therefore aware of the proposed mode of distribution.



- They further stated that the estate of the deceased cannot remain un-administered after the demise of the administrator and the court cannot issue a grant to a person who has not applied to have the same.
9. They further averred that the respondents have been involved in the settlement talks but they failed to attend several meetings. The applicants contend that the respondent Miriam is not a better substitute as an administrator as she has never participated with other family members.
 10. Further that the protestor will not be disinherited by the appointment of the applicants as administrators of the estate and the proposed re-distribution is as per where the beneficiaries reside. That the distribution is justified as it is the space each individual occupies.
 11. Further that the orders of redistribution of the estate will only be achieved if the protestor appeals the decision of the court of January 9, 2004 by L Muhiu and urged court to revoke the grant issued to Hotensiah Wanjiku as the same has become inoperative and useless following her demise.
 12. Directions were taken to dispense the application through written submissions.

Applicants Submissions

13. Counsel for the applicants filed submissions on July 6, 2022 and submitted that the property of the deceased Charles Murutu that was distributed to Hotensiah Wamoro Muritu being LR 150/13 original No 150/21 Riara Ridge is pending partial distribution.
14. Counsel submitted that the current application was premised on consent by the beneficiaries which was aimed at settling the disputes in Succ Cause No 150 of 1992, Succ Cause No 505 of 2013, Succ Cause No 25 of 2016 and the revocation application in the cause.
15. According to counsel, the issues for determination is:-
 - a. Whether the applicants should be appointed as administrators to substitute the deceased Hottensiah Wamoro.
 - b. Who should bear the costs of the application.
16. Further counsel contends the applicants are appropriate and capable persons to substitute Hotensiah Wamoro as administrator as she was the sole administrator of the deceased estate. Upon her demise, the estate of the deceased cannot remain un-administered and cited the case of *re Estate of George Ragui Karanja (deceased)* 2016 eKLR where the court held as follows:-

“substitution of the administrators is a matter of immediate concern for an estate should not be left without administrators for long for it would be exposed to wastage and depletion.”
17. Counsel submitted that this suit has been in the court corridors since 1992 and should come to an end devoid of any technicalities and it is therefore necessary to appoint administrators and cited the case of re estate of *Joel Rukwaro Thuku (deceased)* 2018 eKLR stated as follows:-

“where the court appreciated the fact that the Law of succession does not provide for a single administrator or executor when he dies and that an application under section 76(e) of the *Law of Succession Act* the court found out that article 159 (1) of the *Constitution* in which courts comes into play. The court found that section 66 of the *Law of Succession Act* allows a court to appoint an administrator suo moto.”



18. Counsel further submitted that section 66 of the *Law of Succession Act* gives the order of preference as to whom a grant of letters of administration should be made and contends that the applicants are suitable persons to be appointed as administrators; that the respondent has not demonstrated any real objection to having the applicants appointed as administrators and the respondents have not applied for a grant neither have they sought the consent of other beneficiaries to be appointed as administrators.
19. Counsel further contends there is no legal requirement in law that requires the administrators to maintain gender equity balance. As per section 56 of the *Law of Succession Act*, the only instances one would not be appointed as an administrator is when is a minor of unsound mind or bankrupt or more than four (4) persons in respect of the same property; he prayed that the objector be condemned to pay costs.

Objector's Submissions

20. Counsel filed submissions on July 21, 2022 raising two (2) issues. The first (1) issue being the proposed mode of distribution is unfair and inequitable. She contends the acreage of each parcel is uneven and thus the applicants are getting more acres as compared to the objector and other beneficiaries. She stated that James Mbugua was already allocated plot No LR 150/45 (1.542 acres) by the deceased Hottensiah and in the proposed mode of distribution he will be allocated plot No 150/43 (2.298 acres) totalling to 3.84 acres, while the 2nd applicant will be allocated 5.93 acres while the objector and her sister will be apportioned 0.593 acres.
21. It is further submitted that the proposed mode of distribution is inequitable and consent from other beneficiaries have not been obtained by the proposed administrators. Counsel argued that section 38 of the *Law of Succession* provides for equal distribution of the estate of the deceased amongst all beneficiaries.
22. And further submitted that there is no basis as to why the two administrators have a larger share as compared to the other beneficiaries. The objector proposed each beneficiary to have an equal share with at least a minimum of 2 acres each.
23. In response to the supplementary affidavit filed on August 6, 2013, the objector submitted that the signature is a forgery and the contents of the affidavit are unknown; that the applicants have not demonstrated the prejudice to be suffered if the objector is included as an administrator as the objector wishes to be involved in the administration of the estate of the deceased and is keen to have the matter settled.
24. Secondly, the objector submitted that she is alive to the fact that following the demise of her mother Hottensiah Wamoro Muritu, there should be substitution of the administrator and urges the court to allow her to administer the estate of the deceased together with the applicants.
25. Counsel further submitted that the applicants do not rank first in priority over the objector in the appointment of administrators of the deceased estate and cited section 66 of the *Law of Succession Act* which empowers the court to appoint an administrator suo moto; the court may on its discretion join or add other persons if it deems fit and urged this court to exercise its discretion in favour of the objector and allow objector's affidavit.

Analysis And Determination

26. I have considered the grounds in support of the application, averments herein and the submissions filed in support of the respective arguments.



- a. The issue for determination is whether the applicants should be allowed to substitute Hottensiah Wamoro Muritu as administrators
 - b. Mode of distribution of the estate.
27. The *Law of Succession Act* does not expressly provide for the substitution of administrators who die in office. section 81 of *Law of Succession Act* provides as follows:-
- “Upon the death of one or more of several executors or administrators to whom a grant of representation has been made, all the powers and duties of the executor or administrators shall become vested in the survivors or survivor of them:
- Provided that, where there has been a grant of letters of administration which involve any continuing trust, a sole surviving administrator who is not a trust corporation shall have no power to do any act or thing in respect of such trust until the court has made a further grant to one or more persons jointly with him.”
28. It is not disputed the administrator is deceased and the estate remains un-administered. The issue in contention is who should be appointed as administrators of the estate. The law does not provide for the substitution of a single administrator.
29. Further section 82(a) of the *Law of Succession Act* provides as follows:-
- “Personal representatives shall, subject only to any limitation imposed by their grant, have powers to enforce, by suit or otherwise, all causes of action which, by virtue of any law, survive the deceased or arise out of his death for his estate”
30. The applicants contends they are best suited to substitute the administrator as opposed to the protestor.
31. Section 66 of the *Law of Succession Act*, provides as follows:
- “When a deceased has died intestate, the court shall, save as otherwise expressly provided, have a final discretion as to the person or persons to whom a grant of letters of administration shall, in the best interests of all concerned, be made, but shall, without prejudice to that discretion, accept as a general guide the following order of preference”.
- a. Surviving spouse or spouses, with or without association of other beneficiaries;
 - b. Other beneficiaries entitled on intestacy, with priority according to their respective beneficial interests as provided in part v;
 - c. The public trustee; and
 - d. Creditors.
32. The order set out in section 66 is discretionary. the applicants contends that they qualify to be substituted as administrator of the deceased’s estate. They however feel the protestor is not qualified to be substituted as an administrator of the deceased.
33. The applicants and the protestor are children of the deceased, they have the same priority.
34. According to section 66 of the *Law of Succession Act*, the applicant and the protestor are all suited to be administrators of the estate of the deceased. Part of the administration of the estate has been dealt with.



The remaining part is contested by the protestor on the ground of the acreage. The protestor contend the acreage issued to her and her sister is smaller than what the applicants have allocated themselves. I will not deal with the issue of distribution of the estate at this stage. I will deal with the issue of substitution.

35. In order to meet the ends of justice, the court is concerned with the administration of the un-administered estate in an expeditious manner considering age of the matter. I find the applicants have remedied the application for substitution by filing the petition for letters of administration of the estates of Charles Muritu Gacheru dated May 26, 2022.
36. I do not see any prejudice that will be occasioned in having the applicants and the protestor as administrators of the estate of the deceased.
37. Final orders
 1. James Mbugua Muritu, Evans Njenga Muritu and Mirima Njeri Mohamed are appointed as joint administrators of the estate of Charles Muritu Gacheru.
 2. Costs in the cause.

RULING DELIVERED, DATED AND SIGNED VIRTUALLY AT KIAMBU THIS 17TH DAY OF NOVEMBER, 2022.

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RACHEL NGETICH

JUDGE

In the Presence of:

Kinyua/Martin – Court Assistant

Ms. Wanyoike holding brief for Ms. Ndungu for Applicants

