



REPUBLIC OF KENYA



**In re Estate of Mary Mugure Karari (Deceased) (Succession Cause
14 of 2018) [2022] KEHC 15676 (KLR) (17 November 2022) (Judgment)**

Neutral citation: [2022] KEHC 15676 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
SUCCESSION CAUSE 14 OF 2018
RB NGETICH, J
NOVEMBER 17, 2022**

IN THE MATTER OF THE ESTATE OF THE LATE MARY MUGURE KARARI (DECEASED)

BETWEEN

**LUCY NYAMBURA 1ST APPLICANT
JOHN GATHUNGU KARARI 2ND APPLICANT**

AND

**JACINTA WANGARI NGURE 1ST PROTESTOR
TERESIAH WAITHIRA KIMANI 2ND PROTESTOR
JANE NYAMBURA MUTURI 3RD PROTESTOR**

JUDGMENT

1. Grant of letters of administration were issued jointly to Lucy Nyambura, John Gathungu Karari, Jane Nyambura Muturi and Jacinta Wangari Ngure on February 21, 2018.
2. The administrators on April 4, 2018, filed a summons for confirmation of the grant dated April 3, 2018 proposing that all the children of the deceased inherit from the estate of the deceased and distribution' to ensure the beneficiaries did get the portion they have been utilizing and build their homes.
3. On June 19, 2018, Paul Njagi Karau filed an affidavit in support of the summons for confirmation of the grant.
4. On September 12, 2018, the protestors opposed the summons for confirmation and filed an affidavit of protest sworn by Jacinta Wangari Ngure on September 11, 2018. She averred that the deceased's estate comprises LR No 76/176 Kiambu Township and LR No 76/666 Kiambu Municipality. The properties were acquired through the monetary contribution of the deceased and her three (3) sons



namely Samuel Kimani Karari, Charles Kiarie Karari and Gideon Muturi Karari. She stated that she presented the affidavit in place of his husband Charles Kiarie who is now deceased.

5. She pointed out that the three (3) sons are deceased and their share should be inherited by their wives as the deceased held the property in trust of herself and the three (3) sons. She stated that in a family meeting held on August 5, 2001, the family members agreed the distribution would be between the deceased and the three (3) sons who contributed to the acquisition of the properties.
6. She further stated that the summons for confirmation contains names of 3rd parties who do not qualify as beneficiaries of the estate of the deceased. She proposed that the wives of the three (3) sons benefit from the share of their husbands while the other beneficiaries benefit from the share held by the deceased.
7. John Gathungu Karai filed an affidavit in response to the affidavit of protest sworn on September 21, 2018. He averred that the estate in dispute was solely purchased by the deceased without the support of his sons as alleged. He pointed out that the deceased was an employee of Thindigua Co Limited and she used her salary to acquire the property. He further stated that the husbands of the protestors were not involved in the purchase of the suit property as they worked far from Kiambu and stated that the proposed mode of distribution by the protestor is unfair and demonstrates intense and excessive greed by the widows to gain unfairly; that the alleged minutes of August 5, 2001 do not bare the signature of the deceased and her husband who were surviving at the time.
8. On March 11, 2019, the protestors filed originating summons in which they sought the declaration of the court as to whether the properties LR No 76/176 and LR No 76/666 were held in trust by Mary Mugure Karari herself and three (3) others namely Samuel Kimani, Charles Kiarie and Gideon Muturi. Whether the widows are entitled to a share of their husband's portion.
9. In response to the originating summons, Lucy Nyambura swore a replying affidavit dated April 10, 2019. She opposed the mode of distribution as per the the protestors and stated that the protestor has not attached prove to demonstrate that the deceased held the property in trust for her three (3) sons; that if that was the position, the titles ought to have indicated the deceased was holding in trust for herself and the three (3) sons. He denied the existence of a family meeting of August 5, 2001.
10. On September 28, 2021 directions were taken before Lady Justice Kasango to have the matter proceed by *viva voce* evidence.

Protestor's Evidence

11. Pw1 Jacinta Wangari Ngure adopted her witness statement dated March 8, 2019. She testified that she is the wife of Charles Kiarie who was the son of Mary Mugure and stated that the husband and his two (2) brothers purchased the property in dispute though she had no document to prove her assertion. She stated that she got married in the year 1984 and that she was not married at the time when the property was bought. She stated that her husband contributed Kshs 2,000/= to the purchase price of Kshs 4,000/= but she could not tell the contribution of other persons.
12. She testified that only the names of their husbands were written in the meeting of August 5, 2001 and the main agenda was the distribution of the suit property. She said the two parcels are occupied and utilized by the children of the deceased.
13. PW2 Harrison Gicheru adopted his affidavit sworn on June 19, 2019. He stated that he was the Chairman of Thindigua company Limited and he signed the title deeds after the 1st sub division. He said the title deed in respect to Parcel No LR 76/176 was issued in 1985. He said he was not a director when the title deed LR 76/666 was issued. He stated that the deceased Mary was a shareholder in the



company and her three (3) sons Charles, Gideon and Samuel assisted in the purchase as they brought money into the company but paid under the name of Mary. He said the deceased was a squatter with no money and could not afford the purchase of the plot and her sons assisted in the contribution.

Applicant's Evidence

14. DW1 Lucy Nyambura Wakarari adopted her affidavit as her evidence. She said she is the 6th born child of the deceased. She stated that her mother had a total of twelve (12) children and was employed in coffee plantation in the year 1958. She said her mother paid for the plot in instalments from 1966 to 1974 as workers were given the first priority to purchase the plots and the deceased's pension was also used to purchase the plots. She said the first title deed was issued in 1985 while the 2nd title deed was issued in 1995. She said she has been keeping the title deeds and denied the allegation that the plot was jointly purchased by the deceased together with her three (3) sons. She stated that four (4) of the deceased's children who have passed on are buried in the land and proposed all the deceased children to get a share of the deceased estate. She denied existence of any meeting on the distribution of the estate of the deceased and there is no document to prove that the land is held by Mary Mugure in trust for her three (3) sons.
15. DW2 John Gathongo testified that her late mother Mary Mugure (deceased) was employed by Thindigua Company Limited and retired in 1974. He said that Harrison was a Director and he signed the title deeds issued in 1985. He denied the existence of any family meeting to distribute the deceased's estate and stated that her mother's salary was deducted for payment of the land.
16. Directions were taken to have parties file written submissions, only the Protestor's complied.

Protestor's Submissions

17. Counsel for the protestor filed submissions on May 30, 2021. He submitted that the deceased Mary Mugure purchased the two plots with the assistance of her three sons Samuel, Charles and Gideon and held it in trust for herself and on behalf of the three sons and cited section 28 (b) of the [Land Registration Act, 2012](#) which provides as follows:-
 - “ unless the contrary is expressed in the register, all registered land shall be subject to the following overriding interests as may for the time being subsist and affect the same, without their being noted on the register.
 - (b) Trusts including customary trusts.”
18. Counsel urged the court to find the existence of trust on the suit properties and emphasised on the evidence of Harrison Gicharu Ng'ang'a who testified that Samuel, Charles and Gideon paid the money into the office demonstrating a clear intention for trust to be created. Counsel submitted that the registration of the deceased Mary Muthoni in the register does not mean she was the absolute owner of the suit properties; that rights under a trust are supreme and therefore the estate is not subject to distribution as applied in the summons for confirmation of the grant.
19. Counsel further submitted that the protestors who are wives of the deceased's sons Samuel, Charles and Gideon are entitled to benefit from the deceased's estate as per section 29 of the [Law of Succession Act](#) and cited the case of [Nabashon Karungu Macharia vs Rosemary Kabura Njoroge](#) (2016) eKLR where the court recognized a daughter-in-law (widow of a son of the deceased) as one of the beneficiaries of the estate of the latter deceased parent in law.



20. In conclusion, counsel urged the court to make a determination that there exists a trust upon the suit properties in favour of the protestors and proceed to declare the protestors as the rightful beneficiaries of the suit properties.

Analysis and Determination

21. I have considered the grounds in support of protest, the affidavits filed and submissions filed. The issue for determination is whether the deceased held part of the estate in trust for the three sons.
22. The administrators proposed that the estate be shared equally among all the siblings of the deceased with the protestors representing their deceased husbands. The protestors on the other hand contends that the deceased held the property in trust of his three sons. They argue that they should be allowed to inherit their portion while the other children share the portion belonging to the deceased.
23. The administrators argued that the two properties were purchased single handedly by the deceased without the assistance of the three sons Samuel Kimani Karari, Charles Kiarie Karari and Gideon Muturi Karari.
24. The protestors have not adduced evidence of how the property was acquired. Pw1 stated that she was not married at the time the properties were acquired but was informed by her husband. She however did not avail any documents to show the deceased was holding the properties in trust for her husband .
25. I note that the title deeds for the said property bears the names of the deceased. The other siblings have given a history of how the deceased acquired and paid for the properties. There is confirmation that the deceased worked in coffee plantation and the workers of the coffee plantation were paid and allocated land. I also note that the deceased's sons were adults and there is no explanation as to why the properties were not registered in their names if money paid was from them.
26. The protestors having failed to adduce evidence to prove that the deceased held the properties in trust for her three sons; I have no reason to doubt that the deceased solely acquired and owned the properties. The properties therefore form part of the estate of the deceased and should be shared equally amongst all beneficiaries of the deceased.
27. The protestors and the administrators are beneficiaries of the estate of the deceased as per section 29 (a) of the *Law of Succession Act*. The protestors being wives of the deceased sons will receive the share of their husband's portion. The distribution of the estate is anchored under section 38 of the *Law of Succession* which provides as follows:-

“ where an intestate has left a surviving child or children but no spouse, the net intestate estate shall subject to the provisions of section 41 and 42 devolve upon the surviving child, if there be any one or shall be equally divided among the surviving children.”

28. From the foregoing, I find that the estate of the deceased comprising of LR No 76/176 Kiambu Township and LR No 76/666 Kiambu Municipality shall be distributed equally amongst all the children of the deceased with each protestor representing the share of the deceased's sons. The distribution to factor in the portion occupied by each beneficiary.

Final Orders

- 29.
1. Properties LR No 76/176 Kiambu Township and LR No 76/666 Kiambu Municipality form part of the estate of the deceased.



2. The two properties to be distributed equally among the children of the deceased.
3. Each party to bear own costs.

JUDGMENT 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. Wambura holding brief for Njuguna for Respondents

