



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Ndegwa Nginga (Deceased) (Succession Cause
69 of 1999) [2022] KEHC 16611 (KLR) (20 December 2022) (Ruling)**

Neutral citation: [2022] KEHC 16611 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
SUCCESSION CAUSE 69 OF 1999
FN MUCHEMI, J
DECEMBER 20, 2022**

BETWEEN

JOHN MUNENE MURIUKI APPLICANT

AND

ALICE WAMBUI NGARI RESPONDENT

RULING

1. The application dated January 19, 2022 seeks for orders of substitution of the applicant in place of Wachira Ngari Ndegwa the deceased administrator in this cause.
2. The respondent who is the widow of the deceased administrator filed a replying affidavit sworn on June 27, 2022 in opposition to this application.

Applicant's Case

3. The applicant deposes that he is the grandson of the deceased and son of one Muriuki Ndegwa now deceased. He further states that the deceased was the registered proprietor of land parcel Iriaini/Chehe/457 measuring 6.9 acres. The applicant states that the said parcel of land was supposed to be inherited and shared equally between the deceased's two sons Muriuki Ndegwa and Ngari Ndegwa but this did not happen.
4. The applicant avers that the petitioners, Charles Waigumi Muriuki and Ngari Ndegwa died before they completed the administration of the estate. The court later appointed Wachira Ngari Ndegwa as the administrator to step in the shoes of his deceased father Ngari Ndegwa. The applicant thus seeks to be substituted as the administrator so as to proceed and complete the administration of the estate.



The Respondent's Case

5. The respondent deposes that the application is unmerited, incompetent and an abuse of the due process of the law. The respondent avers that she is the widow of the late Wachira Ngari Ndegwa, the administrator and the legal representative of his estate. She further states that this cause is already finalized and that the estate was transmitted to her husband and to one Charles Waigumi Muriuki, the applicant's brother. Thus there is nothing pending in the administration of the estate of the deceased herein. It is further stated that no appeal has been filed against the orders for confirmation of grant.
6. The respondent argues that under the *Law of Succession Act*, there is no provision for substitution of a single administrator by way of application for substitution. Moreover, the applicant is being mischievous by bringing the current application and trying to re-open an already finalized matter.
7. The applicant filed a further affidavit sworn on September 16, 2022 and states that the respondent is a legal representative of her husband's estate, Ngari Ndegwa but she is not the legal representative of the current estate. The applicant further states that the estate herein has not been distributed to completion and thus he is pursuing the court to substitute him as the administrator to enable him file for review of distribution of the deceased's estate.

The Applicant's Submissions

8. The applicant reiterates the contents of his affidavits and submits that land parcel Iriaini/Chehe/457 which has an acreage of 6.9 acres, was owned by the deceased and was to be shared equally between his two sons. The succession cause was filed by Ngari Ndegwa and Charles Waigumi Muriuki, the elder son of Muriuki Ndegwa. At the time of distribution, Ngari Ndegwa got 4.9 acres whereas Charles Waigumi got 2.0 acres. Both administrators died before the acreage could be corrected and the court appointed Wachira Ngari as the administrator of the estate. However, the administrator also died before any progress could be made and therefore as it stands the estate has no administrator.
9. The applicant submits that the children of Muriuki Ndegwa continue to suffer in destitution as they have been deprived of their share of land. The applicant contends that the suit property ought to be shared equally between the families of the deceased's two sons as was originally wished by the deceased.
10. The applicant further submits that the titles issued to Charles Waigumi Muriuki and Ngari Ndegwa in respect of land parcels Iriaini/Chehe/1853 and Iriaini/Chehe/1854 respectively, be cancelled and new ones issued of 3.45 acres each. Alternatively, the applicant contends that 1.45 of an acre be hived from the parcel Iriaini/Chehe/1854 registered in the name of Ngari Ndegwa and the same to be amalgamated to equalize the shares.

The Respondent's Submissions

11. The respondent submits that the estate herein was distributed on October 15, 2008. The grant of letters of administration was issued to both Charles Waigumi and Ngari Ndegwa thereafter Ngari Ndegwa filed for summons for confirmation of grant. The applicant and Charles Waigumi filed a joint affidavit of protest and when the protest came up for hearing, they withdrew the protest. The court thereafter confirmed the grant and the estate was distributed as per the summons for confirmation of grant with Ngari Ndegwa getting 4.9 acres and Charles Waigumi getting 2 acres.
12. The respondent submits that no party has appealed to the mode of distribution although the applicant filed for summons for revocation of grant on September 15, 2017 which was allowed because the grant had become inoperative due to the death of the administrators. The court substituted them with Wachira Ngari Ndegwa who completed the distribution. The respondent further contends that before



the death of the administrator, he carried out transmission and had the land registered in the names of Ngari Ndegwa and Charles Waigumi and the land was portioned into LR Iriaini/Chehe/1853 and 1854. The respondent thus contends that if the applicant was not satisfied with the distribution of the estate, he ought to have filed an appeal.

Analysis and Determination

13. The applicant seeks to substitute the administrator, Wachira Ngari Ndegwa on the grounds that he is deceased and the distribution of the estate has not been completed. The respondents disputes that there is any administration of the estate that is pending.
14. The deceased in this cause died in 1960 and Charles Waigumi and Ngari Ndegwa petitioned for grant of letters of administration intestate. The deceased had two children Ngari Ndegwa and Muriuki Ndegwa and at the time filing this cause Ngari Ndegwa was the only surviving child of the deceased. His co-petitioner, Charles Waigumi was a son to the deceased's brother Muriuki Ndegwa. Ngari Ndegwa applied to have the grant confirmed by summons dated March 8, 2002, where he proposed to have the deceased's estate LR No Iriaini/Chehe/457 measuring 6.9 acres shared between himself and his co-petitioner allocating 4.9 acres to himself and 2 acres to Charles Waigumi. The court confirmed the grant in the said terms on October 15, 2008.
15. Charles Waigumi and his brothers being the applicant herein and one David Ngari Muriuki filed a joint affidavit in protest whereby they opposed the mode of distribution and argued that their parents the deceased and their father were each entitled to half share of the estate. However when the protest came up for hearing on October 15, 2008, the protestors withdrew their protest after the counsel for the petitioner raised a preliminary objection that the protestors could not purport to act for their parents without obtaining letters of administration to represent them. The court thus confirmed the grant and adopted the mode of distribution as proposed by Ngari Ndegwa.
16. Ngari Ndegwa was thereafter forced to seek the assistance of the court for the transmission of the estate because his co-administrator declined to execute the transmission documents to give effect to the confirmed grant. The application was thus allowed and the estate was transmitted to the beneficiaries. LR No Iriaini/Chehe/1854 was registered in the name of Ngari Ndegwa and Iriaini/Chehe/1853 in the name of Charles Waigumi Muriuki. Evidently, the estate has been effectively distributed and leaving no asset pending distribution or administration. These observations were made on September 20, 2019 by Justice Ngaah in his judgement delivered in respect of an application for revocation of grant by the applicant herein. The court only revoked the grant for the sole purpose that the administrators were both deceased. The grounds raised by the applicant of unequal distribution were rejected after due consideration.
17. Notably, the applicant's contention seems to be the mode of distribution which he has addressed in his earlier applications and which were found lacking of merit. Ngaah J gave the history of this matter in his judgement taking into account that the applicant and his two brothers had brought application after application with their concern being unequal distribution of the estate. The judge observed that the only recourse for the applicants in the numerous applications was to file an appeal against the mode of distribution. The judge further stated that this remedy would have been sought at the earliest time possible following the confirmation of grant. It appears that the applicant did not heed to the advise of the judge. He has continued with the same fight of equal distribution which this court has no jurisdiction to revisit.
18. I reiterate that the applicant herein ought to have appealed against the confirmation of grant and in particular, the mode of distribution which he failed to do. In his submissions, the applicant has asked



the court to cancel the titles of the resultant sub-division parcels following execution of the grant. This is a task that this court cannot perform given the facts and circumstances of this cause.

19. Again in his submissions, the applicant urges the court that upon revocation of the grant, to appoint new administrators in the estate. These prayers are not contained in the application and cannot be entertained at the stage of submissions.
20. All considered, I am in agreement with Judge Ngaah that this court cannot appoint new administrators in this cause for the simple reasons that there is no legal or factual basis of granting such an order. This cause is already spent in that the estate was distributed on October 15, 2008 and with the beneficiaries taking up their respective shares. The orders for confirmation of grant have never been challenged in a higher court.
21. In conclusion, I find no merit in this application dated January 19, 2022.
22. Consequently, the application is hereby dismissed with costs to the respondent.
23. It is hereby so ordered.

DATED AND SIGNED AT NYERI THIS 20TH DAY OF DECEMBER, 2022.

F. MUCHEMI

JUDGE

RULING DELIVERED THROUGH VIDEO LINK THIS 20TH DAY OF DECEMBER, 2022

