



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re Estate of Muindi Lei Mutwota (Deceased) (Succession Cause 206 of 2013) [2021] KEHC 167 (KLR) (21 October 2021) (Ruling)**

*In re Estate of Muindi Lei Mutwota- (Deceased) [2021] eKLR*

Neutral citation: [2021] KEHC 167 (KLR)

**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT MACHAKOS**

**SUCCESSION CAUSE 206 OF 2013**

**MW MUIGAI, J**

**OCTOBER 21, 2021**

**IN THE MATTER OF THE ESTATE OF MUINDI LEI MUTWOTA - ( DECEASED)**

**RULING**

- 1 Muindi Lei Mutwota died on 16<sup>th</sup> October 2007.
- 2 Petition for grant of letters of Administration was filed on 10<sup>th</sup> April 2013 by Jackson Muithya & Paul Wambua as the only beneficiaries of the estate.
- 3 The Court granted the Applicants letters of administration on 28<sup>th</sup> October 2013.
- 4 Certificate of Confirmation of Grant was granted to both Applicants on 7<sup>th</sup> May 2014 and the Deceased's estate was distributed equally between them.
- 5 Jackson Muithya Muindi died on 8<sup>th</sup> December 2014 and Peter Muithya Muindi filed an application to be substituted as the sole Administrator of deceased's estate on 24<sup>th</sup> march 2015.
- 6 Summons for rectification was filed on 18<sup>th</sup> January 2018, to rectify the letters of administration and confirmation of grant and remove the name Paul Wambua Muindi who died on 29<sup>th</sup> January 2016. Jackson Muithya Muindi was succeeded by:  
  
Peter Muithya his grandson and Paul Wambua Muinde was succeeded by Nzioka Wambua also his grandson.
- 7 On 29<sup>th</sup> August 2017, Eva Ndunge Muithya & Benson Nzioka Wambua filed a similar Application to have the Letters of administration and confirmed grant rectified in their names as widow and son respectively.
- 8 On 6<sup>th</sup> February 2019 Rectified Grant of Letters of Administration & Confirmed Grant were issued by this Court in the names of Eva Ndunge Muithya & Benson Nzioka Wambua.



- 9 On 10<sup>th</sup> December 2019, Peter Kimongo Muindi filed Summons for revocation or annulment of Grant contesting the locus standi of administrators, non-disclosure of beneficiaries of the deceased's estate and the proposed distribution of the deceased's estate.
- 10 Peter Kimongo Muindi deposed that there was non- disclosure of another Succession Cause 960 of 2009 over the deceased's estate where he sought grant of letters of administration and confirmation of grant.
- 11 A Certificate of Urgency filed on 21<sup>st</sup> July 2020 sought from the Court temporary injunction against any interference, transfer, sub division, sale, or any dealing with Suit properties Mitaboni/ Kathiani/362/130/334/358 & 2116 pending hearing and determination of the application and distribution of the estate herein.
- 12 In the said certificate of urgency are 3<sup>rd</sup> Parties/Respondents included namely, Pauline Nthoki, Cecilia Kyalo, Wanza Mutuku, Christopher Mbithi, Peter Muithya & Peter Muema who by their Replying Affidavit of 5<sup>th</sup> August 2020 claimed to be purchasers for value and in possession of the sold portions of land.
- 13 Hon J D. K.Kemei granted temporary injunction over the suit properties on 21<sup>st</sup> July 2020.
- 14 The Administrators vide Replying Affidavit 5<sup>th</sup> August 2020 deposed that the Applicant's position as beneficiary of the estate of the deceased had not been proved or confirmed.
- On the strength of the original certificate of confirmation of grant issued on 7<sup>th</sup> May 2014, the original administrators, Jackson Muithya Muindi & Paul Wambua Muindi who are deceased sold portions of the suit properties that comprise of the deceased's estate to the 3<sup>rd</sup> parties.
- 15 Both Petitioners and Objector have filed list of Witnesses & Documents to be relied on at the hearing.
- 16 On 2<sup>nd</sup> September 2021, the Administrators through their advocate filed certificate of Urgency seeking maintenance of temporary injunction granted to be maintained on the following grounds;
- a) The Objector's mother Muswii Muindi passed on 27<sup>th</sup> August 2021,
  - b) The Objector and His family and relatives in carrying out burial preparations in meetings held intend to inter his late mother on one of the suit properties that comprise of the deceased's estate herein,
  - c) The Objector is yet to prove his claim as beneficiary of deceased's estate.
- 17 Makueni High Court Hon. J Dulu granted interim orders upto 21<sup>st</sup> September 2021 for mention in Machakos High Court.
- 18 The Respondent/Objector filed Replying Affidavit on 21<sup>st</sup> September 2021 and he deposed that the pending application filed on 2<sup>nd</sup> September 2021 is premature defective and incompetent and as such an abuse of the Court process for the following reasons:
- a) The Application seeks to bar the burial of his late mother Muswii Muindi,
  - b) He is one of the deceased's sons and he is equally entitled to benefit from the estate- he attached the Area Chief's letter of 11/11/2009,



- c) His late mother was legally married to the deceased during his lifetime as a 2<sup>nd</sup> wife and is entitled to interment rites- he attached the Clan decision of 29/9/2009.
- 19 The Objector deposed further that he petitioned before the Court for grant of letters of Administration for the deceased's estate which was granted on 22/1/2010.
- 20 The Objector urged the Court to allow him bury his late mother in one of the suit properties that comprise of the deceased's estate.
- 21 The Petitioners filed written submissions on 4<sup>th</sup> October and urged the Court to consider the following:
- a) Whether it will be just for the Court to grant the orders sought pending hearing and determination of the rightful beneficiaries of the estate of Muindi Lei Mutwota.
- b) There are orders of temporary injunction and interim orders pending determination of the Revocation of grant application.
- c) Therefore, interring the Objector's mother would be against the status quo orders granted and prejudicial to the Petitioners' case.

#### **DETERMINATION**

22. I have outlined the pleadings and submissions filed in the matter so as to give perspective to the dispute pending hearing and determination. I will make the following observations;
23. There are 2 Court files regarding the estate of the deceased in this Court namely Succession Cause 960 of 2009 where the Objector obtained letters of administration and the instant file where letters of administration and confirmed grant were issued with regard to the same estate.
24. *Re Estate of Luduska Hornik Platto (deceased) [2012] eKLR*, the Court observed that "There cannot be two grants in respect of the same Estate". See Also the case of *Re The Estate of Muiruri Gatuku (Deceased) [2014] eKLR*, which noted; "it must be stated from the onset that there can only be one grant of representation to the estate of one individual. It is therefore untenable that there are two grants and sets of administrators in respect of the same estate."
- Cecilia Kiambae & Another v Evangeline Tirindi Josphat & Another [2016] eKLR*, on consolidation of suits filed on the same subject-matter.
25. There are various pending applications for hearing and determination as outlined above that reflect disputes regarding the beneficiaries of the estate of deceased on the one hand, the distribution of the estate of the deceased upon determination of beneficiaries if there will be any change on the other hand and proprietary interests by 3<sup>rd</sup> parties who bought portions of the suit properties that comprise of the deceased's estate.
26. The Objector also conducted parallel proceedings and obtained grant of letters of administration and currently seeks the order of the Court to allow him bury his late mother in one of the suit properties that comprise of the deceased's estate.
27. These issues/disputes remain pending for hearing and determination and until then the Court cannot conclusively and with finality determine the pending matters in the absence of cogent and tangible evidence by parties.



28. The Objector has the right to bury his late mother but to grant that she may be buried of the deceased's estate/property at this preliminary stage is to forestall the pending issue of proof if she was married to the deceased and/or the Objector is a son to the deceased which facts are contested by the beneficiaries.
29. Secondly, temporary interim orders were issued to maintain status quo pending hearing and determination of the pending applications. If, before hearing the order to bury the Objector's mother on the deceased property is granted then the Court will have determined the disputes without according the parties a fair hearing.
30. This Court has not heard the matter and cannot based on the pleadings filed confirm a prima facie case of either of the parties. However, in terms of maintaining status quo, preserving the subject-matter for hearing and determination, the balance of convenience considering the circumstances tilts to the Court refraining from any final orders to be granted before hearing the pending applications. *See Giella vs Cassman Brown (1973) E.A. 358 & [Mrao vs First American Bank & 2 Others \(2003\)](#).*

### **DISPOSITION**

1. Succession Cause 960 of 2009 is consolidated to instant Court file and the lead file shall be Succession Cause 206 of 2013.
2. The Court shall seek from parties how and when the pending applications should be disposed of.
3. The Temporary injunction/interim orders issued are extended and shall remain in force pending hearing of the Applications and/or further orders of the Court.
4. The Application by the Objector for burial shall be considered during hearing of pending application(s) but shall not be granted at this stage for reasons outlined above.
5. Costs shall be in the Cause.

Orders accordingly.

**DELIVERED SIGNED & DATED IN OPEN COURT ON 21<sup>ST</sup> OCTOBER 2021 (VIRTUAL CONFERENCE).**

**M. W. MUIGAI**

**JUDGE**

**No Appearance - for the Applicant**

**Mr. Wesonga - For the Respondent**

**No Appearance - for the Interested Parties**

**Geoffrey - Court Assistant**

