



REPUBLIC OF KENYA



**In re Estate of Bethwell Gakuru (Deceased) (Succession Cause 1285 of 2012)
[2025] KEHC 1798 (KLR) (Family) (13 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1798 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 1285 OF 2012
PM NYAUNDI, J
FEBRUARY 13, 2025
IN THE MATTER OF THE ESTATE OF BG (DECEASED)**

RULING

1. This ruling is with regard to two applications; Amended Summons for confirmation of grant dated 12th March 2020 and Chamber Summons dated 4th June 2024.
2. The Chamber Summons dated 4th June 2024 is presented under Rules 73, 49 and 45 of the Probate and Administration Rules and Section 26 of the *Law of Succession Act* and the Applicants seek the following orders-
 1. That the provisions made to Gladys Wairimu Muya (deceased) and Grace Wambui Muya (deceased) in the deceased will dated 10th August 2004 be distributed to the applicants in equal shares.
 2. That the costs of this application be provided for.
 3. The Respondent opposes the Application and avers that the Applicants should be content with the provision made pursuant to the ruling of the Court made on 9th April 2019.

Background

4. The deceased had 3 wives; Grace Wambui Muya, Alice Wambui Muya and Gladys Wairimu Muya. All 3 wives are now deceased. The Applicants are the daughters of Alice Wambui Muya.
5. The deceased died on 4th August 2011 and provided for his dependants by his will dated 10th August 2004. The Deceased omitted to provide for the Applicants in his will and they successfully challenged this by their application dated 20th March 2017.
6. In ruling delivered on 9th April 2019 the Court directed as follows



1. Reasonable provision for the three (3) applicants be made by vesting and transmitting their interest to be excised from the property known as Gatamaiyu/ Kaga/1381
 2.
 3.
 4.
7. Following the death of the 2 surviving widows the Applicants now want a share of that which was transmitted to the widows by the will of the deceased. In other words, they consider themselves beneficiaries of the estate of the deceased widows of the deceased.

Analysis And Determination

8. The issue for determination is how the estate of the deceased, including the shares to his deceased widows should be distributed.
9. The facts herein are somewhat similar to those in *Re Estate of Ashford Miriti (Deceased)* [2021] eKLR wherein the Petitioner applied for a grant of letters of administration ad litem so as to substitute his deceased father as a beneficiary in the estate of the original deceased (who was a grandfather to the Petitioner). The Court proceeded to analyse the issue of what happens to the share of a deceased beneficiary and underscored that substitution of a deceased beneficiary where a confirmed grant exists cannot be made in the absence of a grant of letters of administration intestate appointing the applicant as the administrator/tix of the Estate of the deceased beneficiary.
10. In *Re Estate of Tuaruchiu Marete (Deceased)* [2019] eKLR the court expressed itself as follows-

Whereas a child of the deceased may take the share of his deceased parent directly, but this should be done in clear cases and with much circumspection. Trouble may come when one of the children of the deceased beneficiary takes the whole of the estate of the deceased beneficiary. This is fraught with many dangers. Consider these dilemmas; (1) you may disinherit other dependants of the deceased; (2) the court may not be in a position to identify the rightful beneficiaries of the estate of the deceased beneficiary; (3) the cause does not relate to the deceased beneficiary, thus, the safeguards in law say gazette of the cause to invite objections may not be available in that kind of transmissions; (4) in case of disputes amongst the beneficiaries of the deceased beneficiary, those may not be resolved in the original cause
11. The Court in *Re Estate of Ashford Miriti (Supra)* observed that the procedure that Petitioner therein had followed was a shortcut which is flawed. The position is that the beneficiary in the estate of the deceased beneficiary should apply for letters of administration in respect of the deceased beneficiary so that it can be distributed to all those who qualify to be the dependants.
12. Assuming that the deceased widows died intestate, Section 66 of the *Law of Succession Act* prescribes the persons entitled to administer their respective Estates. Section 26 also delineates beneficiaries of the estate of a deceased person. It follows therefore that the issue of how the estate of the deceased widows shall be administered and distributed is not one to be determined in the estate of Bethwell Muya Gakuru, the deceased herein.



13. In re Estate of Tuaruchiu Marete (Supra) the Court stated as follows as regards the proper procedure of dealing with the share of a deceased beneficiary:

.... Of significance to note is that the share of the deceased beneficiary belongs to his estate and therefore, to all the beneficiaries of the deceased beneficiary. A more creative way which is supported by law is to indicate that the share shall go to the estate of the deceased to be shared equally by all his children. Such share is held in trust by the administrators of the original cause for transmission to the estate of the deceased beneficiary.

14. The upshot of the foregoing is that in this cause this Court is limited to distributing the estate of the deceased and with regards to the 2 deceased widows will direct that their respective shares will be held in trust by the administrators for transmission to the estate of the deceased.

15. Accordingly, the application dated 4th June 2024 is dismissed.

16. By consent dated 7th March 2023 the parties agreed that Isaac Njoroge Muya replace Grace Wambui Muya as Executrix of the estate of the deceased.

17. By amended Summons dated 12th March 2020 it is proposed that the surviving beneficiaries (house of Grace Wambui Muya and House Alice Wambui Muya) share equally the estate that had been transmitted to Gladys Wairimu Muya (Deceased). All the members of the House of Alice Wambui Muya did not sign the Consent. As stated earlier the assets transmitted to Gladys Wairimu will now be transmitted to her Estate and held in trust by the administrators pending the appointment of administrators to her estate and identification of her beneficiaries (assuming she died intestate). Likewise, the share that is due to Grace Wambui Muya and Alice Wambui Muya.

18. The Grant issued to Keziah Wangari Muya and Isaac Njoroge Muya is confirmed.

The estate of the deceased to be distributed as follows-

1. Gatamayu / Kaaga/ No.9 (12.5 acres) to the following persons absolutely in equal shares
 - i. Administrators to hold in trust for the Estate of Gladys Wairimu Muya
 - ii. Administrators to hold in trust for the Estate of Grace Wambui Muya
 - iii. Bernard Gakuru Muya
 - iv. Joseph Gitau Muya
 - v. Isaac Njoroge Muya
2. Gatamayu/Kagaa/1381(1.494ha) Munanda-ini to the Estate of Alice Wambui Muya.
3. Gatamayu/ Kagaa/ 465 (8acres) to the following absolutely and in equal shares
 - i. Bernard Gakuru Muya
 - ii. Joseph Gitau Muya
 - iii. Isaac Njoroge Muya
 - iv. Peter Chege Muya
 - v. Cyrus Gakuyu
 - vi. Simon Ndinguri



- vii. Gakunga Muya
4. Shares at Kambaa tea Factory Co. Ltd
 - i. 1/3 shares to Estate of Gladys Wairimu Muya
 - ii. 1/3 shares to Estate of Grace Wambui Muya
 - iii. 1/3 shares to Estate of Alice Wambui Muya
5. Kambaa Tea Factory Card number GT xxxx to Bernard Gakuru Muya
6. Kenya Tea Development Authority (KTDA) shares; Certificate Numbers Axxxx and B01414 to Estate of Grace Wambui Muya
7. MAPA House Shares at Kiambu; Certificate No. 5161 to Estate of Alice Wambui Muya
8. Shares in Thome Farmers No. 4 Limited; Share certificate No. 21247 and 21246 to Estate of Alice Wambui Muya
9. Shares at Githunguri Dairy Farmers Milk Plant and card for selling milk number 64 to Estate of Grace Wambui Muya
10. Kenya Commercial Bank Shares to Estate of Gladys Wairimu Muya
11. Kiambu Tea Sacco Shares to Estate of Grace Wambui Muya
12. Njamba Ti Ikere shares to Estate of Alice Wambui Muya
13. Muya Thabai Self Help Group shares to Estate of Grace Wambui Muya
14. Money in
 - i. KCB Bank Account No. xxxx Githunguri Branch
 - ii. Kiambu Dairy & Pyrethrum Union Account No. xxxx
Kiambu Tea Sacco Account No. xxxx-xx-xxxTo be shared equally between the Estates of Gladys Wairimu Muya, Grace Wambui Muya and Alice Wambui Muya (All deceased)
19. The Administrators to finalise transmission of the Estate within 180 days from the date hereof.
20. In the event any administrator or beneficiary fails to execute any document required for the transmission of the Estate within 21 days of delivery to them, the Deputy Registrar Family Division will execute the document
21. On account of the relationship between the parties, each party will bear their own costs.
22. Mention on September 23, 2025 to confirm compliance.

It is so ordered

DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 13TH DAY OF FEBRUARY, 2025.

.....

P. NYAUNDI



JUDGE

In the presence of:

Fardosa Court Assistant

..... for the Applicant

..... for the Respondent

