



REPUBLIC OF KENYA



**In re Estate of the Late Stephen Muthuri Karuri - Deceased (Succession Cause 253"B" of 2012) [2025] KEHC 1439 (KLR) (6 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1439 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
SUCCESSION CAUSE 253"B" OF 2012**

**HM NYAGA, J**

**FEBRUARY 6, 2025**

**IN THE MATTER OF THE ESTATE OF THE LATE  
STEPHEN MUTHURI KARURI- DECEASED**

**BETWEEN**

**JULIUS MUTUMA KARWITHANIA ..... ADMINISTRATOR**

**AND**

**NKONGE KARURI ..... 1<sup>ST</sup> APPLICANT**

**FRANCIS MWITI ..... 2<sup>ND</sup> APPLICANT**

**RULING**

**Introduction:**

1. By an order dated 20<sup>th</sup> May, 2021, this court directed as follows:  
Lr.no. Abothuguchi/kithirune/3188 is distributed as follows:
  - i. 1/3 share to Julius Mutuma Karwithania
  - ii. 1/3 share to Nkonge Karuri
  - iii. 1/3 share to Francis Mwiti
2. To date, the estate remains undistributed due to a dispute concerning subdivision in accordance with the confirmed grant issued on 07<sup>th</sup> May 2021.
3. By notice of motion dated 28<sup>th</sup> February, 2023, Applicants seek to set aside the orders issued on 25<sup>th</sup> May, 2022 to the effect that the estate be distributed in terms of the government surveyor's report dated 30<sup>th</sup> August, 2022. They also seek orders that the said government surveyor's report be set aside on the grounds among others that it is biased as it gives the administrator a larger portion next to a public



road. The Applicants urge the court to rely on a report dated 27th April 2023 by R.M. Kibutha, an independent surveyor to address the irregularities.

4. The Administrator on the other hand argues that he has made substantial developments on the land next to the public road which include permanent houses and a petrol station.
5. Additionally, the Administrator is apprehensive that failure to consider the developments could lead to loss of his investments.
6. I have considered the application in the light of each parties' arguments vis a vis the surveyors' reports dated 30<sup>th</sup> August, 2022 and 27th April 2023.

#### **Issues for Determination:**

7. The central issue in this case is whether the developments made by the Administrator along the public road should guide the subdivision of the estate property and whether this will create unfair prejudice for beneficiaries who have not made developments, particularly with respect to access to the public road.

#### **Analysis:**

##### **Legal Framework**

8. The *Law of Succession Act* (Cap. 160) governs the administration and distribution of estates in Kenya. Section 51(2) of the Act empowers the Court to ensure the estate is distributed in accordance with the confirmed grant, which reflects the final decision on the distribution of the deceased's estate. Further, Section 83(b) of the Act mandates that the administrator ensures the property is distributed according to the confirmed grant.
9. Section 45 of the *Law of Succession Act* prohibits interference with the estate of a deceased person. This law aims at protecting the estate, prevent disputes, and ensure peaceful co-existence among family members.
10. Section 55 of the Act on the other hand directs that the Administrator must ensure equitable and just distribution, avoiding actions that disadvantage any beneficiary.
11. In *Morris Mwiti Mburugu v Denis Kimanthi M'Mburugu* [2016] eKLR, the court held that any unauthorized dealings with a deceased person's estate amounts to intermeddling, which is unlawful and subject to nullification at the request of innocent beneficiaries.
12. In *Jane Kagige Geoffrey & another v Wallace Ireri Njeru & 2 others* [2016] eKLR, the court reiterated that before a grant is issued and confirmed, no part of the deceased's estate should be disposed of, alienated, or trespassed upon.

##### **Developments on Estate Property and Access to the Public Road:**

13. According to the both surveyors' reports, the developments are along the public road and they include semi-permanent houses and a petrol station part of which they say can be demolished to ensure equitable distribution of the estate.
14. Applying the legal principle in Section 45 of the *Law of Succession Act*, I have come to the conclusion that no person, including a beneficiary, can deal with the deceased's estate without court authorization. In the case at hand, the Administrator had no authority to purport to take over or develop part of the estate without succession proceedings.



15. I also find that if the developments along the public road were to become the deciding factor in the subdivision of this estate, the potential consequence of such an approach would be that it would lead to an unfair distribution, particularly for the reason that it gives the Administrator an undue advantage by allocating him a larger portion along the public road as compared to the Applicants.

**Equitable Distribution and Public Road Access:**

16. The foregoing notwithstanding, it is necessary to balance the interests of beneficiaries who have made developments with those who have not, ensuring that no beneficiary is deprived of access to essential services.

17. Access to the public road is a basic right that cannot be compromised in the name of development. The Court must ensure that no beneficiary is excluded from such access, regardless of whether or not they have made developments on the land.

18. I notice that even in the light of their objection, the Applicants have embraced the principle of equitable distribution as enshrined in Section 55 of the *Law of Succession Act* which requires that all beneficiaries be treated justly and without prejudice for they have been kind enough to cede a bigger share of the portion next to the public road to the Administrator.

19. Having considered this matter in its totality, I find that while the developments on the estate property are significant and must be taken into account, the subdivision plan should not solely prioritize these developments for the reason that the access rights of all beneficiaries, particularly to the public road, must be preserved and treated equitably.

**Orders:**

20. The notice of motion dated February 28, 2023 is allowed in the following terms:

1. The orders issued on May 25, 2022 to the effect that the estate herein be distributed in terms of the government surveyor’s report dated August 30, 2022 is set aside.
2. The estate property known as Abothuguchi/kithirune/3188 shall devolve in equal shares to the parties herein in terms of the confirmed grant and as demonstrated by the independent surveyor’s report dated April 27, 2023
3. This being a family matter, each party shall bear its costs of these proceedings, as well as the costs associated with the subdivision and the issuance of the title deeds.

**DATED THIS 03 RD DAY OF FEBRUARY 2025**

**WAMAE.T. W. CHERERE**

**JUDGE**

**DELIVERED AT MERU THIS 6TH DAY OF FEBRUARY 2025**

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**H.M. NYAGA**

**JUDGE**

This ruling is delivered under the provisions of Order 21, Rule 2 of the Civil Procedure Rules

Apology for delay



The Court acknowledges that there has been a delay in the delivery of this ruling due to an unfortunate accident involving the Judge who initially presided over the matter. The Court sincerely regrets the inconvenience this has caused to the parties involved. The Judiciary remains committed to the timely dispensation of justice, and every effort has been made to ensure that this matter is concluded appropriately.

