



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Muthike Muriuki (Deceased) (Succession Cause
37 of 2013) [2025] KEHC 6201 (KLR) (15 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 6201 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
SUCCESSION CAUSE 37 OF 2013**

EM MURIITHI, J

MAY 15, 2025

IN THE MATTER OF THE ESTATE OF MUTHIKE MURIUKI (DECEASED)

BETWEEN

**HAWA MUTIGE KITHAE 1ST APPLICANT
SOFIA WAWIRA GICHIRA 2ND APPLICANT
JANE WAKUTHII KAMAU 3RD APPLICANT
AGNES WANJIKU GICHIRA 4TH APPLICANT
MARY WANJIRA MUTHIKE 5TH APPLICANT**

AND

EARNEST KABIRU GICHIRA RESPONDENT

RULING

1. By Summons dated 1/7/2024 the applicant seeks specific reliefs as follows:

- “1. That this honourable court be pleased to partly review the orders issued on 11/7/2016 confirming the grant herein and do re-distribute the estate of the deceased to the beneficiaries.
2. That this honourable court to order the government surveyor to resurvey the land in in dispute.
3. That the costs of this application be provided for.”

2. The application was opposed by Grounds of Opposition dated 1/8/2024 in terms as follows:

“Grounds Of Opposition



1. The issues raised were adequately addressed in a ruling delivered on 8th April 2024.
 2. The application is res judicata. It's incompetent and an abuse of the Court.
 3. The application should be dismissed with costs.”
3. The Court heard the application with the applicant urging her prayer to the Court to direct a survey of each party to establish the size of the property being distributed and pointing out that the surveyor had in previous survey not conducted the survey properly; that the daughters do not know the size of their land and the administrators had not involved the daughters in the exercise.
 4. For the administrator it was urged that the matter was res judicata by virtue of the ruling of the Court of 8/4/2024 and the parties had consented to to a surveyor filing a report after the survey and the exercise had been done in the presence of all the beneficiaries including eh applicant. It was submitted that the applicant had filed an application dated 30/12/2019 for the land to be surveyed so that the daughters could know the size of their entitlement, and the application was dismissed and there had not been any appeal. It was contended that the same issues raised had been determined in the earlier ruling and the Court could not reopen the matter.

Determination

5. The Court has no power to supervise or sit on appeal from a decision of a court of equal jurisdiction. This Court cannot purport to correct the finding of the previous court (Mwongo, J.) in this matter over the same question of the survey and size of the land inherited by the daughters. If the applicant is aggrieved by the order of the Court made on 8/4/2024, the remedy is an appeal against the decision or an application for review on the facts of the case.
6. In the Ruling of 8/4/2024, the Court (Mwongo, J.) considered the question of daughters entitlement raised in the application of 30/12/2019 –
 - “ 4. By an application dated 30.12.2019, the daughters sought an order directing the respondent/administrator to cause the Land Parcel No. Ngariama/Lower/ Ngariama/1299 to be surveyed in order to distribute to the applicants their entitlement. They argue that no sub-division has been done.”
7. The Court’s determination on the dispute was set out as follows:

“Conclusion & Disposition

13. It appears to me that the option of sub-dividing the portions in any other manner is not sustainable on the following grounds:
 - a) narrow length of plots that would result in them being un-useful and economically not viable, and b) interference with existing developments in the portions that have established houses.
14. I note that the consent entered into by the parties cannot be achieved because only the portions indicated in the grant for the brothers is exactly specified as two (2) acres. The portion specified for the daughters is indicated as the "remaining portion", and the exact acreage for each such portion is not specified. Thus, the confirmed grant did not take into account that road access must be provided from the original plot of land.



15. In the circumstances, since the filed Survey Plan has made deduction for road access reserve from all portions, that is the best option in the present circumstances.
 16. Accordingly, I am persuaded that the sub-division option provided by the Surveyor is the least disruptive and most tenable option in the given circumstances, and I would allow it.
 17. In the result, the applicants' application is declined and is hereby dismissed. The court hereby adopts the sub-division based on the Survey Plan filed on 13th November 2019.”
8. In supporting the application, the Applicant by paragraphs 2 and 3 of the Supporting Affidavit sworn on 1/7/2024, seek to reopen the issue of the distribution already determined by the Court as follows:
- “2. That the grant was confirmed on 11/7/2016 distributing the estate of our father comprised in LR No. Ngariama Lower Ngariama.1299 and we failed to agree, prompting this matter to drag upto 8th April 2024 when a ruling was delivered and it became ambiguous to our brothers who are not willing to cooperate and they are adamant that no surveyor would come on the ground for alignment.
 3. That the said grant needs to be reviewed by this honourable court for it to indicate the shares of the daughters because the brothers are not willing to cooperate and involve e an independent surveyor instead they are suggesting to remain with bigger portions and denying others access to their portions.”
9. The applicant seeks an order for review of the confirmed Grant and that the Court “do re-distribute the estate of the deceased to the beneficiaries.” The Court has already done this by its order of 8/4/2024 set out above. The matter is res judicata.
10. It appears that the applicant complaints about the conclusion of the Court in the ruling of 8/4/2024 on the question of survey and distribution of the Estate, and the remedy lies on appeal. See Court of Appeal in National Bank of Kenya Limited v Ndungu Njau [1997] KECA 71 (KLR) that-
- “A review may be granted whenever the court considers that it is necessary to correct an apparent error or omission on the part of the court. The error or omission must be self evident and should not require an elaborate argument to be established. It will not be a sufficient ground for review that another Judge could have taken a different view of the matter. Nor can it be a ground for review that the court proceeded on an incorrect exposition of the law and reached an erroneous conclusion of law.”

Orders:

11. Accordingly, for the reasons set out above, the Court finds that the issues raised in the application dated 1/7/2024 have already been determined by the ruling of 8/4/2024, and this cannot sit on appeal on the matter.
 12. The application is dismissed.
 13. There shall be no order as to costs.
- Order accordingly.



DATED AND DELIVERED THIS 15TH DAY OF MAY 2025.

EDWARD M. MURIITHI

JUDGE

Appearances:

Applicants in person.

Mr. Kagio for the Respondent.

