



In re Estate of M’mpwi M’itaru alias Impwi Itaru (Deceased) (Succession Cause 740 of 2011) [2024] KEHC 337 (KLR) (22 January 2024) (Ruling)

Neutral citation: [2024] KEHC 337 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
SUCCESSION CAUSE 740 OF 2011**

TW CHERERE, J

JANUARY 22, 2024

**IN THE MATTER OF THE ESTATE OF M’MPWI
M’ITARU ALIAS IMPWI ITARU (DECEASED)**

BETWEEN

GLADYS KAROKI M’IMPWI.....1ST PETITIONER

AND

SAMUEL MWONGERA IMPWI.....2ND PETITIONER

AND

IN AN APPLICATION FOR REVOCATION

BETWEEN

JOYCE GATABI M’IMPWI PETITIONER

AND

SAMUEL MWONGERA IMPWI RESPONDENT

RULING

Introduction

1. Letters of administration in this cause were issued to Gladys Karoki M’Impwi and Samuel Mwongera Impwi on September 10, 2014.
2. By a ruling dated 23rd day of January, 2019, Gikonyo J distributed deceased’s estate as follows: the estate
 - a. Land parcel No Nkuene/Uruku/902 measuring 8.8 acres
 1. Gladys Karoki M’Impwi - 1 acre
 2. Joyce Gatabi M’Impwi - 1 acre



3. Janet Ruguru Simon - 1 acre
 4. Hellen Ngautani Marangu - 1 acre
 5. Eunice Nyoroka - 1 acre
 6. Susan Mwari - 1 acre
 7. Samuel Mwongera Impwi - balance
- b. Land parcel No Ngobit Supuko block 5/249
1. Gladys Karoki M'Impwi - 1.39 acres
 2. Samuel Mwongera M'Impwi - 1 acres
3. Subsequently, Gladys Karoki M'Impwi died and by a ruling dated February 22, 2022, Otieno J, directed that her share in land parcel No Nkuene/Uruku/902 be distributed equally to the deceased's daughters Joyce Gatabi M'Impwi, Janet Ruguru Simon, Hellen Ngautani Marangu, Eunice Nyoroka and Susan Mwari and a rectified certificate of confirmation dated February 23, 2022 was issued in respect thereof.
 4. By summons dated on May 12, 2021 supported by an affidavit sworn by Joyce Gatabi M'Impwi, a daughter of the deceased, applicant seeks the following orders:
 1. Revocation of the grant issued to Gladys Karoki M'Impwi and Samuel Mwongera Impwi and the applicant be appointed as the administrator.
 2. The share for in land parcel No Nkuene/Uruku/902 be distributed equally to her grandchildren Duncan Mutethia and Karen Nkatha
 3. The share for Gladys Karoki M'Impwi in land Parcel No Ngobit Supuko Block 5/249 be distributed to the Applicant to transfer to purchasers
 5. Applicant faults Samuel Mwongera Impwi for not distributing the estate to daughters of the deceased whom he claims are not entitled to the estate and for what she refers to as wanton destruction of the estate.
 6. Though served, the respondent neither attended court nor filed any response to the summons.
 7. I have considered the summons in the light of the supporting affidavit and the issue in question is whether the orders sought are merited.
 8. Concerning the 1st issue on revocation of the grant, section 81 of the said [Law of Succession Act](#) provides that; -

“Upon the death of one or more of several executors or administrators to whom a grant of representation has been made, all the powers and duties of the executors or administrators shall become vested in the survivors or survivor of them.....”
 9. Upon the death of Gladys Karoki M'Impwi on February 26, 2021, her powers and duties as a co-administrator vested in the surviving co-administrator Samuel Mwongera Impwi.
 10. There are however instances where an additional administrator may be appointed upon the death of one administrator. (See [In re Estate of Tuaruchiu Marete \(Deceased\)](#) [2019] eKLR).



11. In the instant case, the respondent has been accused of intermeddling with the estate thus misusing the powers bestowed upon him by this court and of failing to discharge his duties under section 83(g) of the Act which requires that the estate be distributed within six months of confirmation of grant or longer period as the court may allow.
12. It has been over 4 years since the certificate of confirmation was issued and one month short of two years since the said certificate was rectified but the estate is yet to be distributed.
13. In the whole therefore, I find that there is good cause and it is in the best interest of all persons concerned that the court in exercise of its discretion under section 66 of the Law of Succession Act appoints an additional administrator of an estate.
14. Concerning the second issue that land parcel No Nkuene/Uruku/902 be distributed equally to her grandchildren Duncan Mutethia and Karen Nkatha, this court has no jurisdiction to sit on appeal on the order by Gikonyo J dated 23rd day of January, 2019 and the prayer is thus declined.
15. Concerning the third prayer that the share for Gladys Karoki M’Impwi in land parcel No Ngobit Supuko block 5/249 be distributed to the applicant to transfer to purchasers, who are unnamed nor the purchase demonstrated, the Court of Appeal had a chance to address the issue of purchasers and Kiage JA in the case of *Mose v Kirwa* (Civil Appeal 125 of 2018) [2022] KECA 730 (KLR) stated as follows:

I am persuaded by the dicta of W. Musyoka in *IN RE Estate of Alice Mumbua Mutua (Deceased)* [2017] eKLR where he articulated the jurisdiction of the LSA, as follows; It may be argued that the subject land is estate property and by dint of that fact the probate court would have jurisdiction thereon. The position is not as simple. The Law of Succession Act, and the rules made thereunder, are designed in such a way that they confer jurisdiction to the probate court with respect to determining the assets of the deceased, the survivors of the deceased and the persons with beneficial interest, and finally distribution of the assets amongst the survivors and the persons beneficially interested. The function of the probate court in the circumstances would be to facilitate collection and preservation of the estate, identification of survivors and beneficiaries, and distribution of the assets.

Disputes of course do arise in the process. The provisions of the Law of Succession Act and the Probate and Administration Rules are tailored for resolution of disputes between the personal representatives of the deceased and the survivors, beneficiaries and dependants. However, claims by and against third parties, meaning persons who are neither survivors of the deceased nor beneficiaries, are for resolution outside of the framework set out in the Law of Succession Act and the Probate And Administration Rules. Such have to be resolved through the structures created by the Civil Procedure Act and rules, which have elaborate rules on suits by and against executors and administrators.” (Emphasis added)

From the foregoing decisions, it is clear to me that for a matter to fall within the purview of the LSA it must; concern itself with the determination of the assets of a deceased, the survivors of the deceased and persons with beneficial interest; involve itself with the distribution of the assets of a deceased among the survivors and any persons with beneficial interest. Those people do not include creditors, purchasers, or such other third parties.



16. From the foregoing, I have come to the conclusion that this court lacks the requisite jurisdiction to determine the unnamed purchasers' right. I echo Nyarangi JA in the case of *The Owners of the Motor Vessel Lilian 'S' v. Caltex Kenya Limited* (1989) KLR 1 that

“..... jurisdiction is everything without it; a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction”.

17. In the end, summons dated on May 12, 2021 succeeds only on one limb. It is therefore hereby ordered: The summons dated November 30, 2021 for revocation has not merit and it is dismissed

1. Joyce Gatabi M'Impwi is appointed as the second administrator to this estate
2. Letters of administration shall issue in the joint names of Samuel Mwongera Impwi and Joyce Gatabi M'Impwi
3. The certificate of confirmation of grant rectified on February 23, 2022 shall be further rectified accordingly
4. This cause shall be mentioned on April 29, 2024 to confirm transmission of the estate and for further orders and/or directions

DATED AT MERU THIS 22ND DAY OF JANUARY 2024

WAMAE. T. W. CHERERE

JUDGE

Appearances

Court Assistant - Kinoti/Munene

For Applicant - Ms. Mugo for Gichiunge Muthuri & Co. Advocates

For 2nd Petitioner/Respondent - N/A for M.M Kioga & Co. Advocates

