



In re Estate of Fredrick Munyua Njenga (Deceased) (Succession Cause E055 of 2023) [2024] KEHC 595 (KLR) (18 January 2024) (Ruling)

Neutral citation: [2024] KEHC 595 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
SUCCESSION CAUSE E055 OF 2023
SM MOHOCHI, J
JANUARY 18, 2024**

BETWEEN

GLADYS MUTHONI MUNYUA APPLICANT

AND

NAOMI WAMBUI MIRIGO RESPONDENT

RULING

1. This Succession Cause relates to estate of Fredrick Munyua Njenga (the deceased). The deceased died on the 15th January 2023 Leaving behind a widow and a minor daughter and adult children from the 1st house of the late Esther Nduta Munyua who had passed away twenty-two (22) years earlier on 22nd June 2001.
2. Before me are two Applications for consideration, the 1st Application is dated 16th November 2023, a summons filed by Gladys Muthoni Munyua pursuant to Section 47 Law of Succession, Rule 49 and Rule 73 Probate and Administration Rules, Sections 1A ,1B and 3A of the Civil Procedure Act and Article 159 of the Constitution of Kenya she prays for the following reliefs;
 - i. Spent
 - ii. That, pending distribution of the Estate herein, the Honourable Court be pleased to grant orders directing disbursement from the deceased accounts at ABSA Bank being account number 2033XXXXX1 or Kenya Commercial Bank account number 9016163712452886, the sum of Ksh 16,200 being school fees, Kshs 9400 school fees arrears and Kshs 25,800 being school related expenses and basic subsistence for the benefit of Faith Nyambura, a beneficiary herein.
 - iii. That, the costs of this application be in the cause.
3. The 1st Application dated 16th November 2023 is based on the following grounds:



- i. That, the Applicant is one of the Administrators of the estate.
 - ii. That, the Applicant together with the beneficiary Faith were unlawfully evicted from their home leaving them both almost destitute.
 - iii. That, the beneficiary Faith was forced to seek shelter away from her home and also forced to change schools due to the unlawful eviction.
 - iv. That, with the death of the deceased and the eviction of the Applicant from the premises where the Applicant was carrying out economic activities, the beneficiary Faith is at risk of having her schooling halted and her education compromised as school fees is due on 2nd January 2024.
 - v. That, despite having agreed to that disbursement at a meeting held
 - vi. subsequent to suggestions by the court, the Administrator Grace and the other Respondents have refused to execute a consent to that effect.
 - vii. That, the during the academic year 2023, a good Samaritan paid the school fees, school related expenses and the upkeep for the said beneficiary leaving outstanding fees of Kshs 9400/=.
 - viii. That, the grant of the orders sought pending distribution will halt injustice to the beneficiary, as all the other beneficiaries are adults who are gainfully employed and stand to suffer no prejudice.
 - ix. That, it would therefore be in the interest of justice that the orders sought do issue.
4. Subsequent to the 1st Application dated 16th November 2023, is a Notice of motion dated 23rd December 2023 filed by a Co-Administrator, pursuant to Section 3(2) High Court Practice and Procedure Vacation Rules, Rules 63 of the Probate and Administration Rules and Order 42 Rule 6(1), (2), (3), (4) and (5) and Order 51 Rule 13 (2) of the Civil Procedure rules Seeking the following reliefs;
- i. Spent.
 - ii. Spent
 - iii. That, pending the hearing and determination of this Application, this Honourable Court be pleased to grant leave to the Applicants to institute Proceedings against the Estate of Fredrick Munyua Njenga for the fraudulent and illegal transfer and sale of Properties registered referred to as Nakuru Municipality Block 27/38 registered in the name of Esther Nduta Munyua on the 1st day of May 1995 measuring approximately 0.0800 Motomenegai Block 1/1090 (mangu) purchased on the 3rd day of April. 1998 registered in the name of Esther Nduta Munyua without obtaining Letters of Administration to the Estate of Esther Nduta Munyua.
 - iv. That, pending the hearing and determination of this Application. This Honourable Court be pleased to order that a stay of proceedings be issued to the Estate of Fredrick Munyua Njenga.
 - v. That, in the alternative and without prejudice the Estate of Fredrick Munyua Njenga be ordered to compensate the estate of Esther Nduta Munyua at current Market value rates the for the illegal and fraudulent transfer of properties referred to as Nakuru Municipality Block 27/38 registered in the name of Esther Nduta Munyua on the 1st day of May. 1995 measuring approximately 0.0800 H. A & Kampi Ya Moto/Menegai Block/1090 (mangu) purchased on the 3rd day of April, 1998 registered in the name of Esther Nduta Munyua without obtaining letters of administration to the estate of Esther Nduta Munyua and later sold off by Fredrick



Munyua Njenga without obtaining letters of administration to the detriment of beneficiaries of the Estate of Esther Nduta Munyua.

- vi. That, this Honourable Court be pleased to make such other and/or further orders as may be just and expedient in the circumstances.
 - vii. That, the costs of this Application.
5. The Application is premised on the annexed affidavit of Grace Nyambura Munyua and on the following grounds:
- i. That, the Applicants herein are the children of the Late Fredrick Munyua Njenga and Esther Nduta Munyua who among them is the Legal representative of the late Esther Nduta Munyua who was the 1st wife of the Late Fredrick Munyua Njenga.
 - ii. That, the Deceased Fredrick Munyua Nienga passed on the 15th day of January 2023 in Joveleen Women Hospital in Nakuru.
 - iii. That, the Applicant has since discovered that her father prior to his demise secretly, illegally and fraudulently albeit without obtaining letters of administration sold off properties belonging to the wife Esther Nduta Munyua to the Detriment of her estate and beneficiaries.
 - iv. The Deceased Fredrick Munyua Njenga had married Esther Nduta Munyua who passed on leaving behind her children who are entitled to her share of the Property that was registered in her name but their father Fredrick Munyua Njenga (Deceased) secretly, illegally and fraudulently transferred and later sold off properties registered in the name of Esther Nduta Munyua albeit on non-disclosure and without obtaining letters of Administration to the detriment of the Beneficiaries of the Estate of Esther Nduta Munyua.
 - v. That, the Honourable Court on the 29th day of September, 2023 issued letters of Administration to Grace Nyambura Munyua and Gladys Muthoni Munyua to the Estate of Fredrick Munyua Njenga respectively as the Deceased Daughter and Deceased's second wife which letters for Administration are due to be confirmed on the 29th day of March, 2024.
 - vi. That, on the 16th day of November, 2023 Gladys Muthoni Munyua proceeded and filed summons for confirmation of grant of even date, and in her summons for confirmation of grant alleging that the Beneficiaries have failed to reach a consensus on the mode of distribution of the Estate of Fredrick Munyua Njenga which is partially true because the Deceased together with her new wife Gladys Muthoni Munyua secretly illegally and fraudulently disposed of the Properties of the Estate of Esther Nduta Munyua who was the 1st wife of the Fredrick Munyua Njenga (Deceased) to the Detriment of the Beneficiaries and albeit without obtaining letters of Administration.
 - vii. The Deceased Fredrick Munyua Njenga had married Esther Nduta Munyua (Deceased) who died on the 22nd Day of June 2001 at Kenyatta Hospital in Nairobi County leaving behind properties in Land referred to as:
 - a. Kampi Ya Motomenegai Block /1090 (Mangu) purchased on the 3rd day of April, 1998 registered in the name of Esther Nduta Munyua measuring approximately 0.0486 H.A. which upon the demise of Esther Nduta Munyua was secretly transferred to Fredrick Munyua Njenga on the 20th day of September. 2002 and later on irregularly and fraudulently sold to the detriment of the Beneficiaries of the Estate of Esther Nduta Munyua .



- b. Land referred to as Nakuru Municipality Block 27/38 registered in the name of Esther Nduta Munyua on the 1st day of May. 1995 measuring approximately 0.0800 HA secretly transferred to Fredrick Munyua Nienga on the 20th day of September. 2002 upon the demise of Esther Nduta Munyua and later on irregularly and fraudulently sold to the detriment of the Beneficiaries of the Estate of Esther Nduta Munyua .
- viii. That Fredrick Munyua Njenga sold off a furniture business registered jointly in the name of Fredrick Munyua Nienga and Esther Nduta Munyua to the detriment of the beneficiaries of the Estate of Esther Nduta Munyua.
- ix. That Prior to the Death of the Deceased Fredrick Munyua Nienga fraudulently and secretly sold properties that were registered in the name of Esther Nduta Munyua (Deceased) referred to as Kampi Ya Motomenegai Block /1090 (Mangu) and Nakuru Municipality Block 27/38.
- x. That, on the 3rd may. 2023 the Applicant-Grace Nyambura Munyua was appointed as the Legal Representative to the Estate of Esther Nduta Munyua.
- xi. That, the Honourable Court appointed on the 29th day of September, 2023 Grace Nyambura Munyua and Gladys Muthoni Munyua as Administrators. the 1st Respondent who is a co-administrator has proceeded and filed Summons for Confirmation of Grant without taking into account that the Deceased fraudulently. illegally and secretly sold off properties belonging to his first wife Esther Nduta Munyua without obtaining Letters of Administration and Consent of all the Beneficiaries of the Estate of Esther Nduta Munyua to the Detriment of other beneficiaries.
- xii. That it is imperative that Honourable court be pleased to grant leave by staying the proceedings of the Estate of Fredrick Munyua Njenga to allow the Legal Representative and the Beneficiaries of the Estate of Esther Nduta Munyua to institute proceedings in the Environment and land Court for the recovery of Assets belonging to the Estate of Esther Nduta Munyua which were illegally and secretly transferred to Fredrick Munyua Njenga and later Sold off without obtaining letters of administration and without the Consent of all the beneficiaries and to the detriment of the Estate of Esther Nduta Munyua.
- xiii. That, Unless the Applicants herein are granted leave to commence Proceedings against the Estate of Fredrick Munyua Njenga and further issued with a stay of Proceedings for the Estate of Fredrick Munyua Njenga they are likely to suffer Prejudice as the Letters of Administration for the Estate of Fredrick Munyua Njenga are due for confirmation on the 29th day of March. 2024.
- xiv. That, the deceased Esther Nduta Munyua died intestate leaving behind the following dependents.
 - i. Michael Njenga Munyua
 - ii. Grace Nyambura Munyua (Legal Representative of Esther Nduta Munyua)
 - iii. John Reuben Kamau Munyua
 - iv. Moses George Kinuthia
- xv. That, the Longevity of the Applicants and other beneficiary's life depends on the availability of financial support from the estate or the Deceased.



Analysis & Determination

6. I have considered evidence adduced, pleadings and submissions filed. There is no dispute that the deceased left behind 2 houses, a surviving widow Gladys Muthoni Munyua and seven (7) children five (5) of whom including (Grace Nyambura Munyua) are from the 1st House.
7. The sad reality of this application is that it's akin to classical "weaponization of litigation" a practice to abhor and condemn, a practice that negates all principles of Justice, and not intended to achieve Justice but rather intended to delay Justice.
8. This Court decline the invitation by the first Co-Administrator, Grace Nyambura Munyua to injunct, stay indefinitely, and effectively place "in the freezer" her father's probate and administration proceedings.
9. An administrator Grace Nyambura Munyua cannot allege fraud and misrepresentation a criminal conduct that occurred allegedly in 2003 to 2005 and she continued residing with the deceased father almost 10 years, a period which their father allegedly committed fraud and illegally transferred two assets belonging to their mother either to himself forwards sale or permanently to himself so to that extent the allegations raised serious warranting special directions.
10. As to why the Applicant never moved court against the deceased herein (her father) has not been explained and remains a mystery.
11. It flies on the face that, an administrator cannot seek to injunct proceedings relating to which he/or she is administering as a personal representative, the best cause of action to take is to resign so I fault the application to that extent. Alternatively, the Administrator could have as well sought directions.
12. This Court in exercise of its inherent jurisdiction, partially allows both Applications on the following terms;
 - a. Grace Nyambura Munyua is hereby granted 45 days leave to move to the Environment and Land Court and file adverse proceedings against the estate of the late Frederick Munyua Njenga.
 - b. Grace Nyambura Munyua shall file a return with copies of the pleading filed before the Environment and Land Court within the next Forty-Five (45) days from today.
 - c. The Forty-Five (45) day leave granted shall operate as a stay of proceedings hearing for the period provided.
 - d. An Order for Reasonable Provision, is hereby made in favour of Faith Nyambura Munyua in the nature of school fees payable directly to Hon. Njoroge Secondary School, Equity Bank Kasarani Branch A/C 1180263668067 of Ksh 16,200/-, Sixteen Thousand Two Hundred Shilling.
 - e. Any future invoiced school fee shall be payable.
 - f. The 1st and 2nd co-administrators shall prepare and execute the requisite withdrawal or electronic funds transfer forms to be drawn from the ABSA Bank A/C 20337695 of the deceased.
 - g. The School fees of Faith Nyambura shall be paid within the next fourteen (14) days and any demonstrable resistance by any Administrator shall automatically allow the Deputy Registrar to execute and/or counter-sign the requisite forms.



- h. This Order Shall be served upon the ABSA Bank Branch where the Bank Account No.2033XXXXXX is located.
- i. A mention for further directions shall be held immediately after forty-five (45) days
- j. This Being a family matter, parties shall bear their own Costs.

DATED, SIGNED AND DELIVERED AT NAKURU ON THIS DAY OF 18TH DAY OF JANUARY, 2024.

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S. Mohochi

JUDGE

