



REPUBLIC OF KENYA



In re Estate of Peter Gakuo Njuguna (Deceased) (Succession Cause 566 of 2001) [2024] KEHC 1584 (KLR) (20 February 2024) (Ruling)

Neutral citation: [2024] KEHC 1584 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
SUCCESSION CAUSE 566 OF 2001
SM MOHOCHI, J
FEBRUARY 20, 2024**

**IN THE MATTER OF ESTATE OF PETER GAKUO NJUGUNA (DECEASED)
ELIZABETH NJERI GAKUO.....APPLICANT/1ST ADMINISTRATOR
VERSUS
ELIZABETH NJERI.....1ST BENEFICIARY/PROTESTOR
GEORGE KIRATU NDOGO.....2ND BENEFICIARY/PROTESTOR**

RULING

1. This is a ruling on a summons for rectification dated 5th April 2019 which was supported by the sworn Affidavit of Joseph Mwangi Gakuo dated evenly and a supplementary Affidavit of Joseph Mwangi Gakuo dated 28th May 2019.
2. It is noteworthy that the Summons dated 5th April 2019 came up for hearing on the 30th May 2023 where in the court allowed the same reserving its directions relating to prayers 1(c) and (d) on the summons relating to inclusion of alleged undisclosed shares of the deceased in Kihoto Munyaka Company Limited and Ngong Butcher Co-operative Society Limited.
3. While the advanced age of the administrator is noted, surprisingly she never swore an affidavit in support of or in opposition to this summons and her silence is stealth.
4. The Prayers 1(c) and (d) on the summons read as follows?
 - “c) That the confirmation of grant be rectified to include the deceased’s shares in Kihoto Munyaka Company Limited which was left out inadvertently and the same be distributed among Joseph Mwangi Gakuo, Samuel Ndungu Gakuo and Daniel Ndirangu Gakuo.



- d) That the confirmation of grant be rectified to include the deceased's shares in Ngong Butcher Co-operative Society Limited and the same be distributed to Elizabeth Njeri Gakuo".
5. This Court on the 21st of July 2023 directed the Parties to file written submissions relating to inclusion of alleged shares of the deceased or opposition to such inclusion.
6. The Administrator has despite multiple request to extend time failed to file her written submissions while the Protestors filed their written submissions on the 26th October 2023.
7. In summary the protestors in submissions are opposed to prayers 1(c) and (d) and contend that there is no evidence of existence of such shares has been presented.

Analysis and Disposition

8. The Estate of the deceased as per the Administrator's P&A 5. Form Affidavit in support of her petition dated 30th November 2001 no disclosure was made of any shares belonging to the deceased in Kihoto Munyaka Company Limited and Ngong Butcher Co-operative Society Limited forming part of his assets.
9. The Summons for Rectification dated 5th April 2019, together with the two supporting affidavits' do not disclose the alleged actual number shares of the deceased in the respective companies.
10. The court further notes the annexed "Ex FAJMG I" is a partnership deed for "Munyaka Company" wherein the deceased entered into an agreement with nine other persons on the 27th May 1961. Annexure "Ex FAJMG II" are copies certificates of lease of Kihoto Munyaka Company and Kihoto Munyaka Building Company and that no explanation has been offered on the distinct names' variance or difference.
11. No Evidence has been presented in proof of ownership of a particular number of shares by the deceased in Ngong Butcher Co-operative Society Limited.
12. The certificates of lease of Kihoto Munyaka Company and Kihoto Munyaka Building Company created a joint tenancy which is subject to the rule on survivorship and that the deceased interested thereon if any were extinguished upon his demise.
13. Accordingly, and owing to the foregoing reasons, this Court is thus inclined to decline the prayers
14. A Rectified Certificate of Confirmation of grant shall issue with regards to prayers 1 (a) and (b) namely;
 - i. That the Grant of probate for letters of administration issued to the said administrator Elizabeth Njeri Gakuo in this matter by this Honourable Court and confirmed on the 17th day of June, 2005 be rectified in the following respects: -
 - a. That the name of one of the beneficiaries be rectified to read Joseph Mwangi Gakuuand not John Mwangi Gakuoas it appears.
 - b. That the name of one of the beneficiaries be rectified to read Daniel Ndirangu Gakuo and not Daniel Ndungu Gakuoas it appears.
15. The Administrator shall within the next 60 days file a return relating to the distribution undertaken so far.
16. This being a family matter there shall be no Order as to costs.



It is so ordered.

DATED, SIGNED AND DELIVERED AT NAKURU ON THIS DAY OF 20TH DAY OF FEBRUARY, 2024.

.....

S. MOHOCHI

JUDGE

