



**In re Estate of Japhet Mwarania M'arimi alias Japhet Mwarania alias Japhet M'arimi (Deceased)  
(Succession Cause 460 of 2011) [2024] KEHC 1430 (KLR) (15 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 1430 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
SUCCESSION CAUSE 460 OF 2011  
TW CHERERE, J  
FEBRUARY 15, 2024**

**BETWEEN**

**FLORENCE KARAMBU MWARANIA ..... OBJECTOR**

**AND**

**JOSECK MUTHURI MWARANIA ..... 1<sup>ST</sup> PETITIONER**

**JADIAH MURUNGI MWARANIA ..... 2<sup>ND</sup> PETITIONER**

**RULING**

**Background**

1. Japhet Mwarania M'Arimi Alias Japhet Mwarania Alias Japhet M'Arimi (Deceased) died sometimes on 10<sup>th</sup> February, 1970.
2. Deceased's estate comprised of the following assets:
  - a. Nkuene.Taita/64
  - b. Nkuene/Nkumari/928
  - c. Nkuene/Taita/317
  - d. Nkuene/Nkumari/172
  - e. Plot No. 2 Nkubu
  - f. Plot No. 67a Nkubu
3. The chief's letter dated 31<sup>st</sup> October, 2027 filed together with this cause discloses that deceased family included the following
  1. Joses Mwebia Mwarania - Son - Deceased



2. Joseck Muthuri Mwarania -Son
  3. Justus Muriungi Mwarania - Son
  4. Julius Mbae Mwarania - Son - Deceased
  5. Joseph Mutai Mwarania -Son
  6. Miriam Nkirote Looremita - Daughter
  7. Milkah Gaceri Mwarania - Daughter
  8. Jesulun Murerwa Mwarania -Son
  9. Jadia Murungi Mwarania - Son
  - (10) Jamin Mwongera Mwarania - Son
4. The Certificate of Confirmation of Grant dated 21<sup>st</sup> August, 2017 reveals that deceased's estate was distributed not only to his children but to his grandchildren and daughters in law as well.
  5. Subsequently, the court granted an order for rectification of the Certificate of Confirmation of Grant dated 21<sup>st</sup> August, 2017 and a Rectified Certificate of Confirmation of Grant dated 13<sup>th</sup> October, 2021 was issued after Petitioners brought in grandchildren that were not in the previous Certificate of Confirmation of Grant dated 21<sup>st</sup> August, 2017.
  6. The Rectified Certificate of Confirmation of Grant dated 13<sup>th</sup> October, 2021 was challenged by the Objector on the ground that it was done secretly and without consultation with all the beneficiaries.
  7. By a ruling dated 13<sup>th</sup> October, 2023, Otieno J. allowed rectification of the grant to include grandchildren and daughters in law that had not been included in the Certificate of Confirmation of Grant dated 21<sup>st</sup> August, 2017.

#### **Application dated 29<sup>th</sup> May, 2023**

8. 1<sup>st</sup> Petitioner/Administrator by application dated 29<sup>th</sup> May, 2023 seeks orders that the Certificate of Confirmation of Grant dated 21<sup>st</sup> August, 2017 be amended and the name of a grandchild one Robert Koome whom he says is son of Julius Mbae Mwarania s/o Japhet Mwarania M'Arimi Alias Japhet Mwarania Alias Japhet M'Arimi (Deceased) be substituted with that of his mother Judith Ncugune M'Irambi on the ground that Robert Koome died on 12<sup>th</sup> December, 2021.
9. By her replying affidavit sworn on 10<sup>th</sup> July, 2023, Florence Karambu Mwarania (Objector) opposed the application on the ground that by an order dated 21<sup>st</sup> August, 2017, the court directed that the name of Robert Koome be substituted with Erick Leon Mwenda Mwarania but the Certificate of Confirmation of Grant dated 21<sup>st</sup> August, 2017 was issued in the name of Robert Koome as a beneficiary. The Objector additionally avers that the said Robert Mwenda is not the son of Julius Mbae Mwarania but a stranger and is not entitled to benefit from the estate of the deceased.

#### **Application dated 17<sup>th</sup> July, 2023**

10. Flowing from the background set out above, Wycliffe Wambunya Indeje who states that he is son of Lucy Karimi Mwebia d/o Jose Mwebia Mwarania s/o Japhet Mwarania M'Arimi Alias Japhet Mwarania Alias Japhet M'Arimi (Deceased) and therefore a great-grandchild of the deceased moved the court by the notice of motion dated 17<sup>th</sup> July, 2023 seeking to review the Certificate of Confirmation



of Grant dated 21<sup>st</sup> August, 2017 on the ground that his mother Lucy Karimi Mwebia (now deceased) was not provided for.

11. By his replying affidavit sworn on 18<sup>th</sup> October, 2023, Joseck Muthuri Mwarania (1<sup>st</sup> Petitioner) acknowledged that Wycliffe Wambunya Indeje was a grandchild of his brother Joses Mwebia Mwarania and proposed that he be provided for.
12. By her replying affidavit sworn on 02<sup>nd</sup> November, 2023, Florence Karambu Mwarania (Objector) averred that the share for Wycliffe Wambunya Indeje, if he proves to be a grandson of Joses Mwebia ought to be drawn from the estate of Joses Mwebia Mwarania and not from the estate of the deceased herein.
13. By his replying affidavit sworn on 01<sup>st</sup> November, 2023, Jadhah Murungi Mwarania (2<sup>nd</sup> Petitioner) averred that Wycliffe Wambunya Indeje was a stranger to the estate and was thus not entitled to benefit from the estate.
14. One Rose Ngugi by her affidavit sworn on 20<sup>th</sup> November, 2023 opposed the application and stated that she was daughter of Lucy Karimi Mwebia d/o Joses Mwebia Mwarania s/o Japhet Mwarania M'Arimi Alias Japhet Mwarania Alias Japhet M'Arimi (Deceased) and that Wycliffe Wambunya Indeje was not her brother.

### **Analysis and Determination**

15. I have considered the applications dated 29<sup>th</sup> May, 2023 and 17<sup>th</sup> July, 2023 in the light of affidavits on record and submission filed on behalf of the parties.
16. Starting with the application dated 29<sup>th</sup> May, 2023, the proceedings of 21<sup>st</sup> August, 2017 reveal that by consent of the parties, the court directed that the of Robert Koome appearing on the list of beneficiaries be substituted with the name of Erick Leon Mwenda Mwarania.
17. It is worth noting that the Certificate of Confirmation of Grant dated 21<sup>st</sup> August, 2017 did not comply with the court order 21<sup>st</sup> August, 2017 that directed that the name of Robert Koome be substituted with Erick Leon Mwenda Mwarania.
18. To that extent, I find that the 1<sup>st</sup> Administrator/Applicant's application dated 29<sup>th</sup> May, 2023 is incapable of being granted for the reason that it seeks to improperly amend a court order by including a party that the parties by consent omitted from the list of beneficiaries.
19. Concerning the application dated 17<sup>th</sup> July, 2023, the applicant claims to be a great-grandchild of the deceased a position that is supported by the 1<sup>st</sup> Administrator and opposed by 2<sup>nd</sup> Administrator, the Objector and one Rose Ngugi who claim that the applicant is unknown to them.
20. In my considered view, whether or not Wycliffe Wambunya Indeje is son of Lucy Karimi Mwebia d/o Joses Mwebia Mwarania s/o Japhet Mwarania M'Arimi Alias Japhet Mwarania Alias Japhet M'Arimi (Deceased) and therefore entitled to a share of the estate that ought to have been given to his grandfather is not a matter for determination in the cause of Japhet Mwarania M'Arimi Alias Japhet Mwarania Alias Japhet M'Arimi (Deceased).
21. From the history of this case which has been pending in this court since 2011, I notice that the issues now arising and stalling this cause relate to distribution to grandchildren and great-grandchildren whose deceased parents are the children of deceased herein and also to daughters in law whose deceased husbands are sons of the deceased herein.
22. Section 41 of the Law of Success Act provides as follows:



Property devolving upon child to be held in trust

Where reference is made in this Act to the "net intestate estate", or the residue thereof, devolving upon a child or children, the property comprised therein shall be held in trust, in equal shares in the case of more than one child, for all or any of the children of the intestate who attain the age of eighteen years or who, being female, marry under that age, and for all or any of the issue of any child of the intestate who predecease him and who attain that age or so marry, in which case the issue shall take through degrees, in equal shares, the share which their parent would have taken had he not predeceased the intestate.

23. My understanding of this section is that it is permissible for grandchildren to inherit directly from their grandparents where their parents who are the children of the deceased are themselves deceased and my brothers Chitwembwe J and Otieno J appreciated this fact when they allowed some of the grandchildren to be included in the distribution of deceased's estate.
24. From what I have summarized hereinabove however, it appears that the approach of grandchildren inheriting directly from the deceased herein is not viable for the reason that it has opened up a floodgate of applications and brought on board new issues for litigation that are unrelated to the distribution of the estate.
25. In my considered view, I find that this court would be stretching its jurisdiction beyond the issues in this cause if it were to delve into the issues of identification of deceased's grandchildren and greatgrandchildren and would miss the main purpose for which this cause was filed which is to distribute the estate of the deceased to its rightful beneficiaries.
26. I have painstakingly considered how this cause can finally be brought to rest and I have found succor from Section 47 of the Law of Succession Act which gives the Court all-embracing powers to make necessary orders to safeguard the deceased's estate. This section must be read together with Rule 73 of the Probate and Administration Rules which further emboldens Court's jurisdiction to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of Court.
27. In the end, I have come to the conclusion that justice would be better served to all the concerned parties if the estate is devolved to the deceased's children who are alive and to the estates of those that are deceased so that those claiming under them can resolve the unique issues relating to each particular family in separate causes.
28. From the foregoing analysis, it is therefore hereby ordered as follows:
  1. Both applications dated 29<sup>th</sup> May, 2023 and 17<sup>th</sup> July, 2023 are disallowed
  2. The Certificate of Confirmation of Grant dated 21<sup>st</sup> August, 2017 is revoked in its entirety
  3. The Administrator/Petitioners are directed to apply for confirmation of the grant by identifying the respective shares of deceased's children whether dead or alive as the beneficiaries
  4. Notice is issued to both Administrators that this court will not hesitate to revoke their appointment if they do not diligently discharge their duties as provided under Section 83 of the Law of Succession Act Cap 63 Laws of Kenya.
  5. Mention on 29<sup>th</sup> April, 2024 to confirm compliance with these orders and for further orders

**DATED AT MERU THIS 15<sup>TH</sup> DAY OF FEBRUARY 2024**

**WAMAE. T. W. CHERERE**

**JUDGE**



## Appearances

Court Assistants - Kinoti/Munene

1<sup>st</sup> Administrator - Present in person

2<sup>nd</sup> Administrator - Ms. Kinyanjui for Mbaabu M’Inoti & Co. Advocates

For Objector - Mr. Njindo for Ngunjiri Michael & Co. Advocates

Wycliffe W. Indeje - Present in person

For Interested Party - Mr. Kiruai for Kiruai Mukono & Co. Advocates

For Mwongera - Mr. Mwirigi for OMK Advocates

