



REPUBLIC OF KENYA



In re Estate of the Saberio M'Mutungi Kithamba (Succession Cause 82 of 2007) [2024] KEHC 1464 (KLR) (15 February 2024) (Ruling)

Neutral citation: [2024] KEHC 1464 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
SUCCESSION CAUSE 82 OF 2007
TW CHERERE, J
FEBRUARY 15, 2024**

BETWEEN

ZACHARY KIAMBI MUTUNGI APPLICANT

AND

SASINTA KATHURE M'MUTUNGI PETITIONER

AND

MARY KAIRUTHI NDUBI 1ST RESPONDENT

LYDIA KANANU 2ND RESPONDENT

LUCY MWARANIA 3RD RESPONDENT

CATHERINE KENDI M' MUTUNGI 4TH RESPONDENT

RULING

1. By ruling dated 11th October, 2018 and Certificate of Confirmation of even date, deceased's estate was distributed as follows:

Nyaki/Kithoka/753 equally to

- i. Fredrick Kimathi Mutungi
- ii. Jane Gatimba
- iii. Madalina Kairuthi Mutungi
- iv. Lydia Kananu
- v. Lucy Mwarania

Ntima/Igoki/1871 equally to



- i. Catherine Kendi Mutungi
- ii. Lydia Kananu
- iii. Lucy Mwarania
- iv. Madalina Kairuthi Mutungi
- v. Francis Kamai Mutungi
- vi. Zachary Kiambi Mutungi
Nyaki/Mulathankari/529 equally to
- i. Sasinta Kathure Mutungi
- ii. Catherine Kendi Mutungi
- iii. Fredrick Kimathi Mutungi
- iv. Geoffrey Gikundi Mutungi
- v. Francis Kamai Mutungi
- vi. Zachary Kiambi Mutungi
Ntima/Igoki/3999
¼ of the rent to Sasinta Kathure M'mutungi
¾ of the rent equally to
- i. Fredrick Kimathi Mutungi
- ii. Geoffrey Gikundi Mutungi
- iii. Francis Kamai Mutungi
- iv. Zachary Kiambi Mutungi
- v. Mary Kairuthi Ndubi
- vi. Lydia Kananu
- vii. Lucy Mwarania
- viii. Catherine Kendi
- ix. Jane Gatimba

2. To this date, the grant has not been executed as a consequence of which Zachary Kiambi Mutungi (Applicant) by summons dated 22nd August, 2023 seeks the following orders:

- a. That this Honourable Court be pleased to order that all the necessary documents be executed or signed by Deputy Registrar of this Honourable Court so as to effect the transfer of land parcel No. Nyaki/Mulathankari/2977 to the applicant the said parcel of land being the applicants share from land parcel No. Nyaki/Mulathankari/529
- b. That this Honourable Court be pleased to order the execution of all the necessary documents by the Deputy Registrar so as to effect the transfer of land parcel No Ntima/Igoki/1871 which share is now land parcel NoNtima/Igoki/7977



- c. That the $\frac{3}{4}$ rent payable from premises built in land parcel No. Ntima Igoki/3999 be deposited in rent account to be operated by the beneficiaries and be shared equally as specified in the confirmed grant issued on 11/10/2018
 - d. That cost of this application be provided for.
3. The application is supported by the affidavit of the applicant sworn on the same day and grounded inter-alia on the following grounds: -
 - a. That despite the applicant having been ready and willing to meet the transmission costs, the petitioner/administrator has refused to transfer to the applicant his share from land parcel No. Nyaki/Mulathankari/2977 and Ntima/Igoki/1871, the said shares now being land parcel Nos. Nyaki/Mulathankari/2977 and Ntima/Igoki/7977 respectively.
 - b. That all the subdivisions were carried out by the petitioner and she is now creating new conditions of creating an access road on the subdivision of the initial land parcel number Nyaki/Mulathankari/529 yet all the subdivisions thereof have an already existing road and the said matter was determined by the court and noted on the confirmed grant dated 11/10/2018
 - c. That the court also gave the petitioner $\frac{1}{4}$ of rent payable from land parcel No. Ntima/Igoki/3999 while $\frac{3}{4}$ rent was to be taken by all the other beneficiaries as per the grant dated 11/10/2018 but she has refused to remit the said rent to the beneficiaries.
 4. Sasinta Kathure Mutungi (Petitioner/1st Respondent) opposed the application vide her replying affidavit dated 08th November, 2023 in which she denies refusing to transfer land parcel number Nyaki/Mulathankari/2977 and Ntima/Igoki/7977 to the applicant and share the rent from land parcel number Ntima Igoki/3999. She additionally avers that the delay has been occasioned by a pending application dated 22nd May, 2022 by Catherine Kendi Mutungi which seeks among other orders to cancel all the titles deeds and subdivisions emanating from land parcel number Ntima/Igoki/1871 and Nyaki/Mulathankari/529 which are the parent parcels of the sub-division that the applicant is seeking to be transferred into his name.
 5. Petitioner/1st Respondent further avers that the sub-divisions of Nyaki/ Mulathankari/2973-2977 are narrow and long strips of land which cannot be served by the existing road especially on the rear part and that it is only fair, just and proper that the access roads be created before transmission so that all the beneficiaries can benefit from the three access roads and bring the issue of access road to an end.
 6. Concerning the issue of rental income from Plot No. Ntima Igoki/3999, Petitioner/1st Respondent avers that the family in a meeting held on 28th February, 2018 unanimously agreed that she utilizes the rent from the said property for her food, clothing and medical attention since she does not depend on her children.
 7. The response elicited a response from the Applicant who by a further supporting affidavit sworn on 11th December, 2023 avers that the allegation by the Respondent that she could not transfer the parcels of land due to the application made by Catherine Kendi seeking cancellation of the titles was determined sometimes back and cannot be reason for the Petitioner/1st Respondent not to perform her duties.
 8. Upon careful consideration of the application and the rival responses of the parties, the issue for determination is whether the applicant is entitled to the relief sought.
 9. With due respect to the Petitioner/1st Respondent, the court by ruling dated 11th October, 2018 directed that the issue of access roads into different shares resulting from sub division of L.R. Nyaki/



Mulathankari/529 be considered after persons portion has been transferred. Additionally, no orders have been issued concerning Catherine Kendi Mutungi's application dated 27th May, 2022 that can be construed to hinder her from implementing the grant herein.

10. From the foregoing, I find that it has been demonstrated that Petitioner/1st Respondent has failed to discharge the duties imposed on her by Section 83(g) of the Law of Succession Act which requires that the estate be distributed within six months of confirmation of grant or longer period as the court may allow.
11. A period of close to six years have passed since the grant was confirmed and the estate remains undistributed to the detriment of the Applicant and other beneficiaries.
12. All is however not lost for the reason that in order to ensure compliance of its orders, this court has powers to authorize the Registrar of this Court to sign the transmission documents on behalf of the defaulting party, the Petitioner/1st Respondent herein.
13. Consequently, I find that the summons dated 22nd August, 2023 is merited and it is hereby ordered:
 - a. In the event that the Petitioner/1st Respondent and any other necessary party does not sign and or execute the transmission documents of any or all of the assets in this cause, this court hereby authorizes the Deputy Registrar of this Honourable Court to sign and or execute such transmission documents on behalf of the Petitioner/1st Respondent and any other such defaulting party
 - b. Fredrick Kimathi Mutungi, Geoffrey Gikundi Mutungi, Francis Kamai Mutungi, Zachary Kiambi Mutungi, Mary Kairuthi Ndubi, Lydia Kananu, Lucy Mwarania, Catherine Kendi and Jane Gatimba the beneficiaries of $\frac{3}{4}$ rent payable from premises built in land parcel No. NTIMA IGOKI/3999 are directed to open an account for deposit of the said rent by close of business on 29th February, 2024 failing which the rents from March, 2024 shall be deposited in court
 - c. That cost of this application be provided for.
 - d. Petitioner/1st Respondent shall bear the costs of this application
 - e. Mention on 29th April, 2024 to confirm transmission

DATED AT MERU THIS 15TH DAY OF FEBRUARY 2024

WAMAE.T. W. CHERERE

JUDGE

Appearances

Court Assistant - Morris Kinoti

For Applicant - Mr. Mwanzia for J.K.Ntarangwi & Co. Advocates

For Respondents - Ms. Masamba for Mithega & Kariuki Advocates

