



In re Estate of Godfrey Wanjohi Mahinda (Deceased) (Succession Cause 14A of 2005) [2024] KEHC 889 (KLR) (6 February 2024) (Judgment)

Neutral citation: [2024] KEHC 889 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
SUCCESSION CAUSE 14A OF 2005
SM MOHOCHI, J
FEBRUARY 6, 2024**

IN THE MATTER OF THE ESTATE OF GODFREY WANJOHI MAHINDA (DECEASED)

BETWEEN

JOSEPHINE MUTHONI MAHINDA APPLICANT

AND

MUGURE MAHINDA RESPONDENT

JUDGMENT

Background

1. The deceased, Godfrey Wanjohi Mahinda died intestate on 30th August, 2004, in the United States and left behind a widow Mugure Mahinda, and seven (7) children; Lawrence Njaramba Mahinda, Lucy Wanjiku Mahinda, Peter Githitu Mahinda, Edward Ndururi Mahinda, Anthony Ndegwa Mahinda, Josephine Muthoni Mahinda and Grace Nyambura Mahinda.
2. The Respondent in her capacity as the wife of the deceased, petitioned for Letters of Administration intestate dated 12th December, 2004 and filed on 13th January, 2005. The Grant was issued on 1st July, 2005 and on 5th March 2007 she filed summons for Confirmation of Grant and subsequent distribution.
3. A consent was signed by all except Lawrence Mahinda who later filed an objection dated 30th June, 2008. The Objector failed to attend Court and respond to the allegations leveled against him as well as failing to file an Affidavit making proposals on the distribution. He also failed to conduct valuation and file a valuation report even though he was given ample time by the Court. The Court nevertheless proceeded to distribute the Estate vide a Ruling dated 7th May, 2013 by Justice Wendo and subsequently a Certificate of Confirmation of Grant was issued on the same date.



4. On 15th May, 2018, the Applicant filed an Application for Annulment of Grant 10th May, 2018 on the allegation that the Grant was obtained fraudulently and through partial disclosure of material facts and further that the Respondent was using the Grant to sell property to the prejudice of the Applicant.
5. In opposition, the Respondent filed a replying Affidavit sworn and filed on 22nd May, 2018. The Applicant filed a further Affidavit on 19th June, 2019. The Grant was annulled to the extent of the mode of distribution
6. In the Supporting Affidavit filed on 10th December, 2018, the Respondent proposed a mode of distribution. The Court on directed parties to file their respective modes of distributions. The Respondent filed her Affidavits on 9th March, 2021 and 10th March, 2022 with proposed modes of distribution, further list of Documents on 26th October, 2022 and a Supporting Affidavit on distribution on 4th August, 2023. Her position all along has been to the best of the Courts interpretation, the estate be divided equally amongst all the beneficiaries that is herself and her 7 children.
7. The Applicant on the other hand filed Affidavits with what the Court inferred as proposals on 25th January, 2023, 20th July, 2023 and 3rd November, 2023. She contended that she gets a seventh of the properties of the deceased in her attachment marked JMM2.

Analysis and Determination

8. The deceased died almost 20 years ago and only one beneficiary seems to have an issue with how the properties of the deceased are to be distributed as per the proposal of the sole administrator. The major issue for determination is the mode of distribution of the estate of the deceased.
9. The Applicant has repeatedly insinuated or rather put it out that, her mother the Respondent, can only get a life-interest of the estate of the deceased to the exclusion of all other properties. That is as per her interpretation of Section 35 of the *Law of Succession Act*. She has said that she is entitled to a seventh of the estate. In the email to her then advocates dated 25th October, 2018 the Applicant states;

“...per the excerpt below, there is no requirement that an appointment be made to the spouse over an above 35(1) and (2). I would object to it given that the joint properties and those in her name devolve to her. This is my position. Let the judge rule otherwise.”
10. From what can be inferred from that conversation is that, the Applicant would not wish to share the deceased estate with her mother for reason that the section does not provide for apportionment to a widow and even so, in her words, the Respondent would still get the properties that were jointly owned by the deceased. In her Supporting Affidavits dated 25th January, 2023 and 20th July, 2023 at paragraphs 11 and 15 respectively she stated that: -

“...she was entitled to and requests one seventh of accumulated dividends since 2004, one seventh of the accumulated shares, one seventh of the funds in the bank accounts with interests and one seventh of the properties of the deceased.”
11. It is not disputed that the deceased was survived by a widow and 7 children therefore the Section 35 (1) of the *Law of Succession Act* is applicable in this case provides for the mode of distribution. At subsection 1, it provides that:-

“ 35 Subject to the provisions of section 40, where an intestate has left one surviving
(1) spouse and a child or children, the surviving spouse shall be entitled to—



- a. the personal and household effects of the deceased absolutely;
and
- b. a life interest in the whole residue of the net intestate estate:

Provided that, if the surviving spouse is a widow, that interest shall determine upon her re-marriage to any person.”

12. This Court associates itself with Justice Musyoka in the case of *Tau Katungi v Margrethe Thorning Katungi & another* [2014] eKLR he expressed himself thus;

16. “Life interest” is not defined in the Law of Succession Act. Black’s Law Dictionary, ninth edition, West, 2009, defines it as “an interest in real or personal property measured by the duration of the holder’s or another person’s life.” In the context of Section 35 it is an interest held by the surviving spouse during their life “in the whole of the residue of the net interest estate.” Its effect is that the surviving spouse first enjoys rights over the property and at his or her death the property passes to other persons. In the context of Section 35, the widow is entitled to enjoy rights over the residue of the net intestate estate, that is after taking away the chattels and settlement of liabilities, during her life time with the property passing to the children upon her demise or remarriage of she be a widow.
 17. The effect of Section 35(1) is that the children of the deceased are not entitled to access the net intestate estate so long as there is a surviving spouse. The children’s right to the property crystallizes upon the determination of the life interest following the death of the life interest holder or her remarriage. (emphasis) Prior to that, the widow would be entitled to exclusive right over the net estate. This means that if the net estate is generating income she would be the person entitled exclusively to the income so generated. (emphasis)
13. The take home of the above is that, the Applicant as the only surviving spouse exercises a life-interest over the net intestate estate in trust for her children. That is, the net intestate estate should not be distributed in her lifetime only upon her remarriage or death.
 14. Having laid a basis for what constitutes a life interest, this present case is at the moment is at the point of distribution and as such should be done within the law. In that regard each beneficiary is entitled to an equal share of the net intestate estate of the deceased. For avoidance of doubt the Respondent in this case is a beneficiary of the estate of the deceased.
 15. On the issue of distribution of shares, as stated by the Applicant, in her Supporting Affidavits dated 25th January, 2023 and 20th July, 2023, the other beneficiaries are free to renounce their interest in their share of the deceased shares and dividends. Therefore, the shares ideally should be shared equally amongst the children as she does not consider her mother a beneficiary. There are consents from Edward, Lucy and Peter renouncing their interest and authorizing that the shares and dividends do go to their mother.
 16. The question the Court will attempt to answer is whether shares are considered income so generated? The basic definition of an income is; money received for work done or for investments. Shares generally create passive income through regular payouts otherwise known as dividends. The interest which is received above the original investments, that is, the original value invested is considered an income since it is ongoing. The shares of the deceased are in this regard the Respondent’s life-interest entitlement and she is entitled to the income so generated from the shares exclusively. The entitlement as we have established is not absolute as the Respondent will hold in trust for her children until she remarries or dies.



17. The Applicant has also repeatedly claimed that, the Respondent has been using estate funds to pay for advocates fees and this wasted fund which could have been used for valuation. She has accused the Applicant of giving incomplete information but she has not clearly stated what has not been disclosed completely. That she has lost over Kshs. 10,000,000 due to the Applicant's "behaviour" to which the Court asks which behaviour. It seems the Applicant is on a mission to frustrate the process.
18. Parcel Nakuru Miti Mingi/84 was sold to Shelter Building Society as per the attached sale agreement dated 12th January, 1992 and title transferred as evidenced in the certificate of official search dated 11th February, 2011 and thus does not form part of the estate of the deceased. These and mere allegations that have not properly been substantiated. For good reason the said proposal does not find favour with the Court, it goes against the legal parameters.

Disposition

19. The proposal of the Applicant is not viable, as the law cannot be bent to suit her perceived entitlement to the detriment of the Respondent. In view of the foregoing:
- a. Mugure Mahinda the widow and administrator to the deceased's estate, shall exercise life-interest over the shares and dividends of the estate;
 - b. Mugure Mahinda the widow and administrator to the deceased's estate will have a life-interest over property Nyeri/Ruguru/Gachika//223 and Nakuru/Municipality/Block 2/315 and shall accordingly devolve to the beneficiaries upon her death or re-marrying in the following terms;

Nyeri Ruguru Gachika/223	i. Mugure Mahinda ii. Lawrence Njaramba Mahinda's Children iii. Peter Githitu Mahinda iv. Edward Gibson Ndururi Mahinda v. Anthony Ndegwa Mahinda
Nakuru Municipality Block 2/315	i. Mugure Mahinda ii. Josephine Muthoni Mahinda iii. Lucy Wanjiku Mahinda iv. Grace Nyambura Mahinda

- c. Thereafter, the mode of distribution shall be:



Nyeri Municipality Block 111/86 estimated value of Ksh 40,000,000	Josephine Muthoni Mahinda
LR. 12109 Kabazi valued at Kshs. 197,000,000	<ul style="list-style-type: none"> i. Mugure Mahinda ii. Lawrence Njaramba Mahinda's Children iii. Lucy Wanjiku Mahinda iv. Peter Githitu Mahinda v. Edward Gibson Ndururi Mahinda vi. Anthony Ndegwa Mahinda vii. Grace Nyambura Mahinda
Nanyuki/West/Timau Block 167 valued at Kshs 15,000,000	<ul style="list-style-type: none"> i. Mugure Mahinda ii. Lawrence Njaramba Mahinda's Children iii. Lucy Wanjiku Mahinda iv. Peter Githitu Mahinda v. Edward Gibson Ndururi Mahinda vi. Anthony Ndegwa Mahinda vii. Grace Nyambura Mahinda
Nakuru Municipality Block 25 valued at Kshs, 16,000,000	<ul style="list-style-type: none"> i. Lawrence Njaramba Mahinda's Children Plot No. 25/120 ii. Lucy Wanjiku Mahinda Plot No. 25/803 iii. Peter Githitu Mahinda Plot No. 25/449 iv. Josephine Muthoni Mahinda Plot No. 25/721 v. Grace Nyambura Mahinda Plot No. 25/661 vi. Anthony Ndegwa Mahinda Plots No. 25/186, 25/187 and 25/286 vii. Edward Gibson Ndururi Mahinda Plot Nos 25/60, 25/86 and 25/89
Solai Rural Lanet 464/22 Amended Dundori Lanet Block 30/14-170 estimated value 52,000,000	<ul style="list-style-type: none"> i. Mugure Mahinda ii. Lawrence Njaramba Mahinda's Children iii. Lucy Wanjiku Mahinda iv. Peter Githitu Mahinda v. Edward Gibson Ndururi Mahinda vi. Anthony Ndegwa Mahinda



	vii. Grace Nyambura Mahinda
Nyeri Ruguru Gachika/223	i. Mugure Mahinda ii. Lawrence Njaramba Mahinda's Children iii. Peter Githitu Mahinda iv. Edward Gibson Ndururi Mahinda v. Anthony Ndegwa Mahinda
Nakuru Municipality Block 2/315	i. Mugure Mahinda ii. Josephine Muthoni Mahinda iii. Lucy Wanjiku Mahinda iv. Grace Nyambura Mahinda

- d. Since the Applicant has not questioned the transfers of Nakuru/Municipality 25/519 and Nakuru/Municipality 25/25, thus
- i. Nakuru/Municipality 25/519 to be transferred to Mr. and Mrs Johnstone Waliula Wekunda, Catherine Wekoye Chelot.
 - ii. Nakuru/Municipality 25/25 to be transferred to Joseph Kimani Njuguna.
- e. For forfeiting shares in Nakuru/Municipality/25
- i. 4 plots in Solai Rural Laner 464/29 to be transferred to Edward Gibson Ndururi upon completion of subdivision.
 - ii. Old ford Tractors KJV 353 and KUN 379 local trailers ZA 3150 to Anthony Ndegwa
 - iii. Peugeot 404 pick-up KZE 533 to Mugure Mahinda
- f. Any other movable properties that their values could not be established or have depreciated beyond valuation shall remain with Mugure Mahinda;
- g. Monies in bank accounts to be shared equally amongst all the beneficiaries;
- h. The Respondent shall collect all assets of the deceased, held by Asset Recovery Agency and shares and dividends shall apply as in (a) above and monies transferred by banks to the Asset Recovery Agency shall devolve to the beneficiaries as in (i) above;
- i. This being a family matter, parties to bear their own costs.

It is so Ordered.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 6TH DAY OF FEBRUARY, 2024

MOHOCHI S.M.

JUDGE

