



REPUBLIC OF KENYA



**In re Estate of Mumbi Gitiriba (Deceased) (Succession Cause
003 of 2022) [2024] KEHC 2748 (KLR) (14 March 2024) (Judgment)**

Neutral citation: [2024] KEHC 2748 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
SUCCESSION CAUSE 003 OF 2022
SM MOHOCHI, J
MARCH 14, 2024**

IN THE MATTER OF THE ESTATE OF MARY MUMBI GITIRIBA (DECEASED)

BETWEEN

**JOSEPH HASSAN ROBLE 1ST BENEFICIARY
HASSAN WANJOHI 2ND BENEFICIARY
MARGARET NYAGUTHI WANJOHI 3RD BENEFICIARY
SUSAN WAIRIMU HASSAN 4TH BENEFICIARY**

AND

**LILY NJOKI MAINA 1ST ADMINISTRATOR
PETER SIMON NGORI 2ND ADMINISTRATOR**

JUDGMENT

1. The deceased, the Late Mary Mumbi Gitiriba of Afraha, Nakuru passed on the 25th September 2021, at the age of 89 years old leaving her written will dated 11th November, 2014, appointing her two children (Respondents) as Executors to the will. The Applicants are siblings to the Executrices/Respondents and heirs to the estate.
2. It is noteworthy that the deceased left her last will and testament, under the secure multiple-custody of the KCB Bank and the law firm of Otieno G & Co. Advocate who drew and witnessed the same. While the parties are silent as to how the will was actually unveiled upon the demise of the deceased, it has been alluded to by the 2nd Respondent, that all parties had copies of the will that was unveiled by the Otieno G & Co. Advocate and that, she was unaware of her appointment as executor until the unveiling.
3. The Deceased left behind her estate estimated to be worth Kenya Shillings Two Hundred and Ninety-nine Million, (Kshs 299,000,000/-) As per current valuation.



4. This judgment is pursuant to the Ruling dated 18th May 2023 where inter alia the court finds this a valid case qualifying for the exercise of the jurisdiction of the court provided for, in Section 47 of the *Laws of Succession Act* and Rule 73 of the *Probate and Administration* and made the following Orders/ Direction;
- i. An Order is hereby issued directed to the 2nd Applicant-Hassan Wanjohi and the 3rd Applicant-Margaret Nyaguthie Wanjohi to Forthwith hand over and surrender to the Executors, the control and management of LR No Nakuru Municipality/Block 4/225 Ngei Estate and LR No Nakuru Municipality/Block 10/52 Maralal Avenue respectively.
 - ii. An Order is hereby Issued Directed at the Executors/Respondents to forthwith within the next fourteen (14) Days, to select and transmit to the Applicants three (3) names of proseed Audit Firms and three (3) of Firms of Valuers from which a Firm of Valuers and an Audit Firm shall be appointed.
 - iii. An Order is hereby issued and Directed to the Applicants, to appoint a firm of valuers, within the next 30 days from today, to undertake an exhaustive valuation of all the assets forming part of the estate of the deceased; The valuation of the estate shall be expensed from the estate.
 - iv. An Order is hereby Issued Directed at the Applicants, to appoint an Audit firm, within the next Thirty (30) days from today, to undertake an exhaustive Audit of all the assets, Rental Income, maintenance and recurrent expenses, taxes and outstanding loan(s) forming part of the estate of the deceased; and provide projection(s) of clearing any liabilities attached to the estate. The Audit of the estate shall be expensed from the estate.
 - v. That Upon the receipt of valuation report of the estate, Audit report of the estate and the projection of clearing all liabilities, the Court shall, provide clear directions to the Executors and Beneficiaries leading to Confirmation of the Grant and settlement of the estate.
 - vi. Parties are Directed by Court to record a Consent on the accommodation of the 4th Applicant to receive an equal share as all the other beneficiaries, the same to be adopted as an order of the Court.
 - vii. This succession cause shall be mentioned 20th June 2023 to confirm compliance of the orders and further direction to obtain from the Appointed Auditors and Valuers, the scope of and a schedule of the Audit and the scope and schedule of Valuation with strict timelines.
5. The deceased last wish in the will annexed to the Grant of Probate was that:
- i. The estate to be administered collectively by her two appointed executors on behalf all beneficiaries (the Applicants) while making an equal share bi-annual financial provision to all beneficiaries except the 4th Applicant.
 - ii. The Executors/Respondents were to keep good account of the estate and oversee the equal distribution of the rent collections, after payments of all outstanding loans, utility bills, land rates, caretaker fees, agent commission, maintenance costs and insurance premiums.
 - iii. That the 4th Applicant separates from Mr. Patrick Toskin, who the deceased detested with a passion to an extent of naming him almost three (3) times in her will. The Court shall consider the legal effect and consequences of this later in this judgement.



- iv. That the beneficiaries, (all the parties herein) were prohibited from infighting amongst themselves, failure to respect one another, agitating and litigating any conflicts relating to the estate in court and it would appear the deceased detested courts.
6. By the 26th June 2023 the Executrixes had appointed TC Audit firm and Chrisca Real Estates registered valuers who undertook their respective tasks and filed their reports on the 2nd October 2023; Audit Report dated 27th September 2023 and Reports and Valuations of All the five (5) properties forming part of the estate of the deceased. All parties were availed their respective copies of the report.
7. On the 24th October 2023, the court directed parties to file their written submissions on the Audit report and valuation of the estate of the deceased and the Beneficiaries filed their written submissions on 5th December 2023 while the Executrixes filed their written submissions on the 29th November 2023.
8. It is against this backdrop, that the Court has been invited to adjudicate on the confirmation of grant of probate of a written will having considered the submissions.
9. What has been placed before me are two opposing viewpoints the beneficiaries appear hell bent on raising queries relating to the financial audit and thus contend the court should Appoint new administrators.

The Beneficiaries/Applicants Case

10. In the Beneficiaries/Applicants written submissions dated 1st December 2023 raises several questions that arise from the Audit Report that, the Valuation of properties reports do not disclose the independent valuers of the estate.
11. That, it was the Beneficiaries/Applicants expectation that an independent valuation would have been done by 3 registered and independent valuers and the averaging method be used to determine the value of the properties.
12. That there is itemized duplication of expenses cumulatively amounting to 5,030,537/-.
13. That there are itemized expenses that do not warrant being part of estate expenses cumulatively amounting to 1,097,757/-.
14. That the rental schedule for Bethel House has not been included in the financial statements.
15. That, the 1st administrator conducts business in the premise. No analysis has been done to determine rent collected for the entire house, secondly what is the justification of unpaid commissions of Kshs 3, 540.789/- to Lily Njoki? She is neither an agent nor an employee of the estate. This are fictitious expenses purely designed to defraud the estate at the expense of other beneficiaries.
16. Rental income for Nakuru Municipality Ngei, houses 2 beneficiaries who conduct business in the said property. Both beneficiaries should be subjected to prorated rent based on space occupied. The auditor's recommendation to sell off Nakuru Municipality Ngei property is baseless and not part of his term of reference. The sale of the property will deny 2 beneficiaries out of a livelihood which is against Mary Mumbi's wishes. This can be proven by the fact that Mary Mumbi went ahead and registered Nakuru Municipality Ngei property under her and the son's name Francis Wanjohí Hassan (2nd beneficiary) to support his dependents.
17. The estate has many assets e.g. Mumbi House, Bethel House, Naka that can be sold to settle the estates debts especially the principal asset of the estate Nakuru Municipality Block 10/86 Maasai Avenue Bethel House, currently valued at Kshs 140.000.000/= as per the valuation report which was used



to secure the loan from KCB Bank is the most suitable asset to be disposed-off and cater for all the liabilities including the legal fees (to be provided) valuation fees that are yet to be computed and the residual be divided among beneficiaries equally.

18. That, it is the Beneficiaries/Applicants intention is to accord justice to all beneficiaries of the estate and ensure that the process of distributing the estate of the deceased is done in a fair manner and therefore, the recommendation to dispose of Nakuru Municipality Block 4/225- (Ngei Estate) Size 0.0975 Ha. is unrealistic and unpractical as the valuation report by the certified valuer shows the current open market value to be Kshs 22,000,000 which amount will only cover part of the liabilities of the estate and not all of them.
19. That the amounts realized from the rental incomes is shrouded with a lot of fraud, unaccountability and the books clearly indicate poor record keeping fraud though duplication of expenses. Unsupported expenses and baseless commissions and as such it's not a viable avenue that we can advise nor recommend to be used to clear and/or settle liabilities and eventually pave way for distribution.
20. That, it is the Beneficiaries/Applicants desire to recover unsupported and duplicated expenses incurred in the tune of Kshs 6, 128.294/- from the estate administrators.
21. That, it is the Beneficiaries/Applicants plea to the court to disregard amounts payable of Kshs 3,540,789/- from the financial statements to Lily Njoki as the basis of payment is unsubstantiated and unsupported.
22. That, the estate has many assets e.g. Mumbi House. Bethel House, Naka that can be sold to settle the estates debts.
23. That the court to appoint on a new set of administrators who will administer the financial affairs of the estate as from the state of the financial statements there etc.
24. The Beneficiaries/Applicants pray that, the court to provide them with monthly reasonable provisions for their upkeep and well-being until the estate is distributed.

Executrices/Respondents Case

25. That it is the submissions of the executrices, that they go beyond their role as mere executors, and also serve as custodians of a compelling narrative that began with the passing of their late mother. This narrative is delicately woven with emotions, legal intricacies, and an unwavering dedication to fairness on behalf of all beneficiaries.
26. The executrices submit that, it is imperative to highlight that, through its order dated the 23rd May, 2023, the court mandated several pivotal actions.
27. Firstly, it directed the parties to jointly appoint a reputable firm of Valuers tasked with conducting a through valuation of all assets comprising the estate of the deceased. Significantly, the costs associated with this valuation were to be borne by the estate itself.
28. Secondly, the court instructed the executors to engage the services of an auditing firm to conduct a comprehensive audit covering assets rental income, maintenance and recurrent expenses, taxes, and outstanding loans within the estate. Similar to the valuation, the expenses incurred in this auditing process were to be met by the estate.
29. Moreover, the court directed that, upon receiving the valuation and audit reports, along with projections for clearing any liabilities attached to the estate, a clear direction would be provided to the



- executors and beneficiaries. This direction is pivotal to the confirmation of the grant settlement of the estate.
30. That, at this juncture, the parties have diligently received and reviewed both the auditors' report and the valuers' reports. In consideration of this, the Executrices stand ready to present their submissions on these crucial findings for the court's thoughtful deliberation.
31. With regards to the valuation of the estate, the executrices submit that, the journey embarked with a meticulous valuation process, where Chrisca Real Estates, a firm of registered valuers, in accordance with the directive from this Court on the 23rd May, 2023, submitted their detailed report on all the assets. From the executrices review of the report, here is the information that has been gathered:
- a. Bethel House, Title No Nakuru Municipality/ Block10/86, was valued at Kshs 140,000,000.
 - b. Mumbi House, Title No Nakuru Municipality/ Block 10/52, a chapter valued at Kshs 110,000,000.
 - c. Ngei Estate, Title No Nakuru Municipality/ Block 4/225, was valued at Kshs 22,000,000.
 - d. Naka Estate, Title No Nakuru Municipality/ Block 23/706, a was valued at Kshs 17,000,000.
 - e. Kiamunyi Estate, Title No Njoro/ Ngata Block 1/ 5936, valued at Kshs 10,000,000.
32. The executrices submit that, considering the report provided by the Valuer's firm as mentioned earlier, it is important to emphasize that the approximate value of the estate is Kshs 299,000,000/-
33. With regard to the Audit of the estate, the executrices submit that, following the completion of the valuation process the Auditor conducted the audit, as instructed by the court's order dated the 23rd May 2023 and subsequently filed the audit report in court and provided copies to all parties involved. Key highlights from the Auditor's report include:
- a. Rental incomes of Kshs 3,233,388 could not be accounted for i.e. Kshs 2,833,388 from Mumbi House and Kshs 400,000 from Ngei estate.
 - b. For Ngei estate the rental income expected to be paid by the tenant had not been remitted over the period under review.
 - c. The liabilities without including lawyer's fees, is estimated to be Kshs 13,460,422/-
 - d. The estate has a net value of assets amounting to Kshs 281,145,625/- This is after deducting the account payables, borrowings, and contingent liabilities thereof. This is the amount of the legacy which is distributable to the beneficiaries.
34. The Proposed projections for clearing liabilities related to the estate was that, before a deceased's assets are distributed during probate or estate administration, the liabilities of the deceased's estate must be paid only after those bills are paid, then the executrices are to be permitted to distribute the remaining assets in the estate to the beneficiaries.
35. The executrices submit that, in light of the expert report furnished by the Auditor's firm, as previously stated, it is crucial to underscore that the estimated liabilities of the estate amount to Kshs 13,460,422, excluding lawyers' fees and other expenses arising in the succession process. Any potential disagreement concerning funds not substantiated by documentation in the list of liabilities could potentially be addressed and verified when the settlement of liabilities is underway.
36. That, Section 83 of the *Law of Succession Act* outlines the primary responsibilities of administrators, which include the following:



- a. Collection of Assets: Administrators are tasked with the collection, gathering, or acquisition of the assets belonging to the estate.
 - b. Protection of Assets: The second responsibility involved safeguarding and preserving the assets that have been collected or gathered.
 - c. Payment of Debts and Liabilities: The third role is the settlement of debts and liabilities of the estate, utilizing the assets that have been collected and preserved.
 - d. Distribution of the Estate: Finally, once all debts and liabilities have been cleared, the estate can be distributed among the beneficiaries.
37. The executrices submit that, considering the stipulations of Section 83 as previously discussed, the Executrices have adeptly navigated through the complexities of emotions and legal intricacies resulting from numerous applications by other beneficiaries. In doing so, they have conscientiously discharged all their duties and obligations as required.
38. That in accordance with the auditor's report, it is evident that there are outstanding liabilities. Section 86 of the *Law of Succession Act* places a critical emphasis on settling debts before any legacies can be distributed. This section states as follows:
- “Debts to be paid before legacies Debts of every description enforceable at law and owed by or out of an estate shall be paid before any legacy”.
39. That throughout these proceedings, reconciling the beneficiaries has proven to be a challenging task. Despite the Executrices' efforts, all suggestions have faced stern resistance amidst numerous applications from other beneficiaries. It is crucial to note that the beneficiaries are not getting any younger, and financial obligations such as bank interest, fines on land rates, and penalties from statutory obligations like KRA are multiplying. Additionally, some assets are not appreciating in value.
40. In the best interest of all parties involved, the Executrices propose that all assets be immediately placed for sale, in accordance with Section 86 of the *Law of Succession Act*. Specifically, Bethel House (Title No Nakuru Municipality/ Block 10/86), Mumbi House (Title No Nakuru Municipality/ Block 10/52), and Ngei Estate (Title No Nakuru Municipality/ Block 4/225) should be sold, and the proceeds used to settle all liabilities. The remaining amount should then be distributed equally among the six beneficiaries.
41. Regarding Naka Estate (Title No Nakuru Municipality Block 23/706), it is understood that the property is registered in the names of the deceased with a 2/3 share and Francis Hassan with a 1/3 share. The Executrices propose liquidating the 2/3 share and transferring the 1/3 share to Francis Hassan.
42. As for Kiamunyi Estate (Title No Njoro/ Ngata Block 1/5936), it is known to be registered under Nderu Asset Management Limited. However, it has been communicated that a correction is needed, and the correct parcel number is Title No Njoro/ Ngata Block 1/5935, as indicated in the transfer documents. The Executrices request the court to temporarily set aside this asset until the correction is completed.
43. Given that the Kiamunyi Estate (Title No Njoro/ Ngata Block 1/5936), measures one (1) acre, upon the successful completion of the title correction, the Executrices suggest the subdivision of one eighth (1/8) of the entire parcel. This specific section, serving as the burial site for their late mother, is also proposed to be officially designated as a Family Cemetery. The recommendation includes the proper fencing of this area to ensure the sanctity and preservation of the burial site.



44. Considering the inability of the parties to reach an agreement, the Executrices urge the court to exercise its inherent jurisdiction and grant the orders as outlined in our preceding submissions.
45. Section 47 of the *Law of Succession Act* provides that:
- “The High Court shall have jurisdiction to entertain any application and determine any dispute under this Act and to pronounce such decrees and make such orders therein as may be expedient:
- Provided that the High Court may for the purpose of this section be represented by resident magistrates appointed by the Chief Justice.”
- It gives this court powers to make such orders and may be expedient.”
46. That, Rule 73 of the *Probate and Administration Rules* gives this court inherent powers to make such orders as may be necessary to meet the ends of justice, or to prevent abuse of the court process.
47. The Executrices invites the Court to invoke Rule 73 of the Probate and Administrative Rules to determine the main issues on merit.
48. That, these legal provisions underscore the importance of addressing outstanding debts before moving on to the distribution of legacies. This approach ensures that the process remains in compliance with the relevant laws and safeguards the rights and interests of all parties involved.
49. The Executrices submit that, the climax approaches - the prudent course of action:
- i. All estate assets sold, covering outstanding liabilities first.
 - ii. Remaining funds distributed, a resolution in tune with the law of Succession.
50. In conclusion, the Executrices submit that, considering the complexities and challenges surrounding the distribution of the estate, it is their fervent belief that the proposals set forth stand as the most prudent course of action. The resistance encountered in reconciling the beneficiaries, coupled with the increasing financial burdens and assets that may not be appreciating in value, underscores the urgency of implementing the suggested plan.
51. That, the Executrices, in their unwavering dedication and pursuit of fairness, advocate for the immediate sale of identified assets, diligent settlement of liabilities, and equal distribution of the remaining proceeds among the beneficiaries. This approach not only aligns with the principles of Section 86 of the *Law of Succession* but also reflects a pragmatic response to the unique circumstances of this case.
52. That, furthermore, the suggested measures demonstrate a responsible and forward-looking approach to the estate's management, considering the beneficiaries' advancing age and the potential financial risks associated with delaying crucial.

Issues for Determination

53. After careful analysis, the court has framed a solo issue;



i. Whether the Grant of Probate of a written will made on 13th January 2022 should be confirmed;

54. From the onset this court recalls that, this cause is a “testate” succession and that, the probate and administration process is different from an “intestate” probate and administration and that an executor named in the written will.
55. According to Section 79 of the *Law of Succession Act*, the estate of a dead person vests in the Executrices. In this cause, the deceased died testate. She named Executrices, in her will, who have obtained probate to the will. It is the said Executrices, whom the assets of the estate vested by virtue of Section 79 of the Act.
56. By virtue of the said vesting, the said Executrices, became entitled to exercise the powers that are set out in Section 82 of the *Law of Succession Act*, which are akin to those of an owner of the property. They can sue or be sued over the property, they can sell or enter into contracts in respect to it, among others. The Executrices, have authority from the grant of representation they hold, whether it is one of probate or of letters of administration, to handle estate property.
57. So, any casual suggestion by the beneficiaries of substituting, replacing or adding administrators as they wish is a misdirection without legal possibility.
58. This court was awaiting the parties input by way of written submissions to determine how best the estate was to be administered in light of the challenges faced and in light of the exclusion of Susan Wairimu and ultimate acknowledgement and inclusion to be bequeathed a share.
59. It was the last wish and testament of the deceased that, her estate is managed by the Executrices while the beneficiaries were to be all provided for and that the deceased never desired her estate to be liquidated.
60. This Court notes the divergence, distrust and contempt subsisting between the Beneficiaries and the Executrices and notes that there is no reconciliation foreseen in the horizon and in fact the intransigence by the beneficiaries and never-ending litigation had had the probate and administration in paralysis with far reaching adverse consequences in the estate.
61. This court declines the overtures by the Beneficiaries for the court to micromanage the estate or the Executrices and that this court restrains itself from falling into such a pit.
62. Any excesses, wastage, plunder, theft or otherwise disadvantaging beneficiaries is actionable with far reaching sanctions if proven and the beneficiaries are thus notified that such action can be undertaken as the distribution continues
63. The belated attempt to belittle or discredit expert reports by the beneficiaries, experts they were involved in selecting is baffling at the least and an attempt at engaging in a mathematical argument is regretted. This court is of the view that the arguments raised over funds by the beneficiaries can only be sustained with expert reports and that should the beneficiaries pursue the said disputed funds.
64. This court notes that, it will be in the best interest of all parties to confirm the Grant of Probate of a written will made on 13th January 2022 to enable the Executrices administer the estate and pay all debts due to the estate. The court is equally of the considered opinion that the entire estate be liquidated and All debts be paid after which the proceeds be shared out equally amongst All the beneficiaries

Determinations

65.
 - i. The Grant of Probate of a written will made on 13th January 2022 is hereby confirmed.



- ii. That all assets be forthwith placed for sale, in accordance with Section 86 of the *Law of Succession Act*.
 - a. Specifically, Bethel House (Title No Nakuru Municipality/ Block 10/86), Mumbi House (Title No Nakuru Municipality/ Block 10/52), and Ngei Estate (Title No Nakuru Municipality/ Block 4/225) should be sold, and the proceeds used to settle all liabilities. The remaining amount should then be distributed equally among the six beneficiaries namely Joseph Hassan Roble, Francis Hassan Wanjohi, Margaret Nyaguthii, Wanjohi Susan Wairimu Hassan, Lily Njoki Maina and Peter Simon Ngori.
 - b. The Executrices shall forthwith place for sale the deceased 2/3 share in Naka Estate (Title No Nakuru Municipality Block 23/706), and Francis Hassan with a 1/3 share shall have the 1st right of redemption failure of which, the property shall be sold and the 1/3 share being refunded in full to Francis Hassan while proceeds of the 2/3 Share of the deceased being distributed equally among the six beneficiaries namely Joseph Hassan Roble, Francis Hassan Wanjohi, Margaret Nyaguthii, Wanjohi Susan Wairimu Hassan, Lily Njoki Maina and Peter Simon Ngori.
 - c. With regards to Kiamunyi Estate (Title No Njoro/ Ngata Block 1/5936), registered under Nderu Asset Management Limited and requires rectification in the title document. The distribution of this asset shall be held in abeyance to await rectification of title by the Executrices.
 - d. Upon rectification of details in the Title No Njoro/ Ngata Block 1/5936), an order for excision and subdividing of one eighth (1/8) of the entire parcel of one (1) acre to be officially designated as a Family Cemetery properly securing the same by fencing off this area to ensure the sanctity and preservation of the burial site.
- iii. The court shall Periodically mention the matter for progress reporting leading to the conclusion and settlement of the estate.
- iv. There shall be no costs this being a Family affair.

It is so Ordered.

DATED, SIGNED AND DELIVERED AT NAKURU ON THIS 14TH DAY OF MARCH, 2024.

MOHOCHI S.M

JUDGE

In the presence of:

CA Schola

Mr. Matagaro, MOM & Co. Advocates- Applicants

Mr. Matoke Matagaro Sironga Law -Respondents

