



REPUBLIC OF KENYA



**In re Estate of Godfrey Karani Mbogori (Deceased) (Succession Cause E007 of 2023) [2024] KEHC 3357 (KLR) (14 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 3357 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
SUCCESSION CAUSE E007 OF 2023  
TW CHERERE, J  
MARCH 14, 2024**

**BETWEEN**

**DENNIS MUTETHIA KARANI ..... 1<sup>ST</sup> PETITIONER**

**GILDINE GATWIRI KARANI ..... 2<sup>ND</sup> PETITIONER**

**AND**

**JENIFFER GACHERI KABURIA ..... OBJECTOR**

**RULING**

1. Objector/Applicant and Petitioners/Respondents are widow and children respectively of Godfrey Karani Mbogori who died on 31<sup>st</sup> March, 2021.
2. The deceased's estate comprises of numerous assets among them LR Ntima/Igoki/5593. On that property sits the matrimonial home of the deceased's first wife (Florence Naitore Karani, now deceased) and mother of the Petitioners/Respondents among others. On the same asset also sits the home for his second wife Jeniffer Gacheri Kaburia (Objector/Applicant) herein.
3. Petitioners/Respondents have brought this cause in their capacity as the executors of the deceased's will.

**Summons**

4. By summons dated 04<sup>th</sup> July, 2023, supported by an affidavit sworn by Jeniffer Gacheri Kaburia (Objector/Applicant) on even date, Objector/Applicant seeks seven orders.
5. The summons was opposed by way of a lengthy replying affidavit sworn by Dennis Mutethia Karai (2<sup>nd</sup> Respondent) on 29<sup>th</sup> September, 2023. He faults the Objector/Applicant for not filing an objection within the time allowed under section 68 of the [Law of Succession Act](#) and Rule 17(1) of the [Probate and Administration Rules](#). He additionally accuses the Objector/Applicant of denying them access to their



mother's house and collecting and keeping to herself rents collected from estate asset. He denies that there is any intention to dispose off any of the deceased's assets and particularly LR Ntima/Igoki/5593 and continues to say that the Objector/Applicant has intermeddled with the estate by alienating part of LR Ntima/Igoki/5593 where she pulled down a store and cowshed and put up for herself a kitchen and a one bedroomed house. Issues concerning the deceased will and how his estate ought to be distributed have also been raised at length.

6. By her supplementary affidavit, Objector/Applicant denies collecting rent from any of deceased's assets and accuses the Respondents of demolishing her house. She additionally adds her voice to the issues concerning the deceased will and how his estate ought to be distributed.
7. The said Letters serve as an authority for the administration of deceased's estate. However, the holder (s) of the letters of administration cannot distribute the estate of the deceased but is to collect and preserve the assets of the deceased.
8. Of the seven orders sought by the Objector/Applicant, four were expressed to be sought pending the hearing and determination of the summons interpartes and have therefore been spent. The orders remaining for determination are therefore as follows:
  1. Whether the court should halt the issuance of the grant of probate to the Petitioners/ Respondents
  2. Whether the court should revoke the proceedings herein and allow the cause to proceed intestate
9. I have considered the summons in the light of the affidavits on record and annexures thereto together with the submissions on behalf of both parties.
10. Of the pending issues for determination, the dispute really is whether or not deceased made a will concerning the distribution of his estate and that in my considered view is a matter that in my considered view can only safely be determined by *viva voce* evidence.
11. Concerning revocation of the proceedings herein to allow the cause to proceed intestate, the order can only be safely issued after the parties have been heard concerning the validity of the will and not at this interlocutory stage.
12. Regarding whether the court should halt the issuance of the grant of probate to the Petitioners/ Respondents, there is no dispute that both parties do not seem to agree on how the estate ought to be distributed now that the will is disputed.
13. Issues have also arisen concerning intermeddling with the estate with the parties pointing fingers at each other. Photographs have been availed to court demonstrating destruction of some estate property.
14. This court has jurisdiction under the provisions of section 47 of the *Law of Succession Act* and Rule 73 of the *Probate & Administration Rules* to issue such orders and decrees as may be expedient and necessary for the ends of justice. The court also has power to issue orders for preservation of the estate either on application by a party or *suo moto*.
15. In the case of *John Marete Kirema & another v Gladys Karimi Muthamia & 3 others* (2013) eKLR Makau J held that:

“My understanding of section 45 of the *Law of Succession Act* is that when the court finds the deceased property is in danger of being intermeddled with it can on its own motion issue



appropriate orders to preserve the deceased estate pending regularization of any process that needs to be regularized...”

16. From the foregoing, I find that it would not be in the interest of justice to halt issuance of the grant of probate to the Petitioners/Respondents for the reason that the court has a duty to ensure protection and preservation of the estate pending determination of the pending issues and subsequently distribute the estate.
17. Consequently, it is hereby ordered:
  1. The summons dated 04<sup>th</sup> July, 2023 is considered and found to have no merit and it is disallowed
  2. Grant of probate shall issue to the Petitioners/Respondents for the sole purpose of protection and preservation of the estate pending determination of the pending issues
  3. The Petitioners/Respondents and their siblings shall have unlimited access to their late mother’s house on LR Ntima/Igoki/5593
  4. Objector/Applicant shall on the other hand have unlimited access to her incomplete house and the kitchen and one bedroomed house she has put up on LR Ntima/IgokI/5593
  5. Rents collected from rental houses on LR Ntima/Igoki/5593 shall from the end of March, 2024 be deposited in a joint interest earning account in the names of Gildine Gatwiri Karani, Dennis Mutethia Karani and Jeniffer Gacheri Kaburia who shall render accounts every three months until further orders of the court
  6. In the event that a joint interest account is not opened as ordered under order (c) above, the rents shall be deposited with the court
  7. The issue concerning the validity of deceased’s will shall be heard by way of viva voce evidence
  8. Parties are directed to file and exchange their respective witness statements with each party having 14 days to comply starting with the Petitioners/Respondents
  9. This cause shall be mentioned on 13<sup>th</sup> June, 2024 to confirm compliance with orders (2) to (8) above
  10. In the intervening period, the parties are encouraged to attempt an out of court settlement on the mode of distribution of deceased’s estate

**DATED AT MERU THIS 14<sup>TH</sup> DAY OF MARCH 2024**

**WAMAE. T. CHERERE**

**JUDGE**

Appearances

Court Assistants - Kinoti/Munene

For Objector/Applicant - Mr. Mutuma for Mutuma & Koskei Advocates

For Petitioners/Respondents - Mr. Kariuki for Mithega & Kariuki Advocates

