



**In re Estate of Nguli Munyoki (Deceased) (Succession Cause
E026 of 2022) [2024] KEHC 2709 (KLR) (12 March 2024) (Judgment)**

Neutral citation: [2024] KEHC 2709 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KITUI
SUCCESSION CAUSE E026 OF 2022**

**RK LIMO, J
MARCH 12, 2024**

BETWEEN

DANIEL KIKU NGULI PETITIONER

AND

ELIZABETH MARTHA NGULI 1ST RESPONDENT

JANE RHODA NGULI 2ND RESPONDENT

ROSE MONICA NGULI 3RD RESPONDENT

ANGELINA MUMBI NGULI 4TH RESPONDENT

FELISTUS MUTENDE NGULI 5TH RESPONDENT

JAMES KYALO NGULI 6TH RESPONDENT

AND

JAMES KYALO NGULI INTERESTED PARTY

JUDGMENT

1. This is an interlocutory appeal against the ruling of Hon. Mbungi Chief Magistrate delivered vide Kitui Chief Magistrates Court Succession Cause No 106 of 2019 which cause is pending for determination in the Lower Court.
2. The cause itself relates to the estate of the later Nguli Munyoki (deceased) who died intestate on 5th January 2019 leaving behind the following dependent's namely;
 - i. Elizabeth Martha Nguli
 - ii. Jane Rhoda Nguli



- iii. Rose Monicah Nguli
 - iv. Angelina Mumbi Nguli
 - v. John Mutua Nguli
 - vi. Joseph Kiteme Nguli
 - vii. James Kyalo Nguli
 - viii. Justus Munyoki Nguli
 - ix. Felistus Mutende Nguli
 - x. Daniel Kiku Nguli
3. The estate of the deceased comprises the following namely;
- a. Matinyani/Kalimani/1426
 - b. Matinyani/Kalimani/1427
 - c. Matinyani/Kalimani/944
 - d. Matinyani/ Kalimani/783
 - e. Matinyani/Kalimani/1428
4. Daniel Kiku Nguli petitioned for letters of administration of the estate of the deceased herein in the cause pending in the lower court but the application to be appointed the administrator met resistance from one of the dependent's namely James Kyalo Nguli who filed an application dated 10th December 2019 seeking for substitution of Daniel Kiku Nguli.
5. Later on in the proceedings Elizabeth Martha Nguli and the other daughter also filed an application dated 29th October 2020 complaining that the petitioner was sidelining them and trying to push them out of the estate. They sought inter alia restraining orders against the petitioner and/or agents from overrunning them from the parts they occupied and utilized. They also sought to have two of the daughters namely Elizabeth Martha Nguli and Angelina Mumbi Nguli as co-administrators of the estate of the deceased.
6. The trial court vide its ruling dated 5.5.2022 found in favour of the respondents herein and appointed them Co-administrators of the estate and also issued restraining orders against the appellant herein.
7. That ruling aggrieved the appellant who lodged this appeal raising the following grounds namely;
- i That the learned Chief Magistrate erred in law and misdirected himself on the fact that both he appellant and all the respondents had a meeting in which they agreed and selected the appellant to administer the estate of their late father.
 - I. That the learned Chief Magistrate erred in law and misdirected himself on the facts in disregarding the fact that the 1st born of the family and the common denominator in the absence of the deceased person's spouse(s) consented to having the appellant as the administrator to their late father's estate.
 - II. That the Learned Chief Magistrate erred in law and misdirected himself on the facts by disregarding the 1st and 2nd Respondent whom were selected as co-



petitioners are married far away from where the appellant lives and from the estate of the deceased.

- III. That the Learned Chief Magistrate erred in law and misdirected himself by disregarding the facts the Respondents had obtained an order dated 10th of November 2020 and issued on 12th day of November 2020 restraining the Appellant or any male child of the deceased from interfering with land parcels Matinyani/Kalimani/1426,1427,1428, 944 and 783.
 - IV. That the Learned Chief Magistrate erred in law and misdirected himself by disregarding the fact that the order referring to the above-mentioned parcels as if they belonged to the respondents yet they were still under succession.
 - V. That the Learned Chief Magistrate erred in law and misdirected himself by disregarding that there was an objection to making of grant by the respondents filed on 28th April 2021 which was yet to be determined.
 - VI. That the learned trial magistrate erred in law and misdirected himself by appointing the 1st and 2nd Respondents as co-petitioners yet there was a pending application by the Respondents challenging the Appellant being confirmed as the Petitioner.
 - VII. That the learned trial magistrate erred and misdirected himself by disregarding the fact that the Respondents never presented any evidence in court to confirm that their interests to the estate of their father were not being considered.
 - VIII. That the learned trial magistrate erred in law by disregarding the evidence presented to court by the appellant and his elder brother one John M. Nguli.
8. In his written submissions through Counsel, the appellants faults the trial court for interference in the administration of estate of the deceased contending that the family sat and agreed by consensus that he should be the sole administrator of the estate of the deceased.
 9. The appellant submits that the orders obtained discriminate against him as a male child, that they obtained orders with concealment of facts and further, that they were obtained with an aim of disinheriting him. He submits that all the respondents are unable to administer the estate and advanced the reasons that the 1st,3rd,4th and 5th respondents (daughters) are married in different places and that their late father allocated them parcels separate from where he allocated his male children. He also submits that the 2nd respondent is not married but that she was given a parcel where she currently resides. He also submits that all the siblings were allocated land by their late father and that their clan, their Amuti clan is aware but the 3rd and 4th respondents have been trespassing on the land allocated to the male children i.e. the appellant and his three brothers.

Respondents' submissions

10. The respondents in their submissions dated 10th August 2023 confirm that all the siblings had agreed to have the appellant petition for letters of administration and filed the petition was filed on 17th June 2019. They contend that the appellant failed to pursue the petition for a period of fourteen months and that the appellant's attitude towards his sisters changed after he started sidelining them. It is submitted that the appellant took over his sisters' parcels of land and compromised his other brothers with exception to the 6th respondents and the brothers ganged up against the sisters. They aver that they filed summons to protect and preserve the rights of the beneficiaries and that the appellant f did



not raise any objection. It is submitted that appellant was inter-planting his own crops against what his sisters had planted in their respective parcels which promoted them to file summons dated 29th October 2020 for orders conservation, preservation and protection of beneficiaries' interests. Counsel submits that the court granted the orders sought and further granted the prayer of appointing two sisters as co-administrators of the estate.

11. The Respondents supports the decision rendered by the trial court pointing out that Section 56 of [law of succession Act](#) provides for a minimum of four administrators in the administration of Re estate of a deceased person. They submit that the trial court had jurisdiction and fault the appellant for introducing new issues in this appeal.
12. This court has considered this appeal and the response made. This court finds that the issues raised should have been settled in the lower court because this is a matter involving siblings who recognize one another. I have noted there was even an attempt by the siblings to agree to the appellant who was the petitioner being appointed as an administrator.
13. The appellant in my view is not so aggrieved with the preservatory orders issued by the trial court but the fact that order issued appears to lock him as a co-administrator.
14. The trial court's ruling in final part states as follows;

“Therefore, for every child of the deceased to feel he/she is enjoying equal protection of this court and for the fast resolution of this matter, I will allow the application and appoint Elizabeth Martha Nguli and Angeline Mumbi Nguli as co-petitioners/administrators of the Estate of Nguli Munyoki.

Further, interim orders issued on 10th November 2020 on preservation of the estate is hereby confirmed in that each child of the deceased shall continue using, occupying, possessing, portions of land parcels Matinyani/Kalimani/1426,1427,1428,944 & 783 just as they had been using, possessing, occupying and/or utilizing the same since and after the death of the deceased pending the hearing and determination of the distribution of the estate of the deceased”.

15. There was an inadvertence in the above decision because the name of the appellant is not mentioned though in the body of the ruling it is apparent that the trial court was minded to have both the sons and daughters of the deceased represented in the administration of the estate for inclusiveness.
16. There is no dispute that under Section 66 of the [Law of Succession Act](#) the court is granted discretion to appoint suitable persons as administrator(s)/ administratrixes of an estate of a deceased person. Section 66 Laws of Succession Act provides:

“When a deceased has died intestate, the court shall, save as otherwise expressly provided, have a final discretion as to the person or persons to whom a grant of letters of administration shall, in the best interests of all concerned, be made, but shall, without prejudice to that discretion, accept as a general guide the following order of preference—

- a. surviving spouse or spouses, with or without association of other beneficiaries;
- b. other beneficiaries entitled on intestacy, with priority according to their respective beneficial interests as provided by Part V;
- c. the Public Trustee; and



d. creditors:

Provided that, where there is partial intestacy, letters of administration in respect of the intestate estate shall be granted to any executor or executors who prove the will.

17. In the persuasive authority of *In re Estate of Tuaruchiu Marete (Deceased)* [2019] eKLR, Justice F. Gikonyo expounded on the instances where an additional administrator can be appointed as follows;

“There are however situations where an additional administrator should be appointed. For instance where there is a resulting trust, a sole surviving administrator is required to apply for an additional administrator to be appointed which failing the court will appoint on its own motion. Similarly, where the intestate is polygamous, death of one of the administrator may require a replacement for purposes of the house he represented. Or for a good cause and in the best interest of all persons concerned the court may appoint an additional administrator of an estate. This is in discretion under section 66 of the *Law of Succession Act*. Therefore, there is no complete prohibition of appointing another administrator in addition to a surviving administrator or administrators. Nothing wrong in the appointment of the first administrator herein”.

18. This Court finds that the trial court was correct in the analysis of the issues raised in the application dated 29th October 2020 and the application of the relevant Section of the law which is Section 66 of Laws of Succession Act as highlighted above. The only error in my view was the omission of the appellant as one of the administrators. This court in the premises will allow this appeal to that extent. I do not find any merit in the argument advanced by the appellant that the Respondents are married and/or live far from the estate. That is not a factor to be considered under Section 66 of the *Law of Succession Act*. In the premises, this court allows this appeal only to the extent that the appellant is now appointed as one of the administrators of the estate of the deceased person. For clarity and for avoidance of doubt the estate of the late Nguli Munyoki will have the following 3 administrator and administratrixes namely;

- (a) Daniel Kiku Nguli
- (b) Elizabeth Martha Nguli and,
- (c) Angeline Mumbi Nguli

The (3) shall jointly administer the estate of the deceased herein in accordance with the law. There shall be no order as to costs because this is a family matter.

DATED, SIGNED AND DELIVERED AT KITUI THIS 12TH DAY OF MARCH, 2024.

HON. JUSTICE R. K. LIMO

JUDGE

