



REPUBLIC OF KENYA



In re Estate of the Estate of the Wilson Kamuri Ng'ang'a (Deceased) (Succession Cause E69 of 2023) [2024] KEHC 2315 (KLR) (1 March 2024) (Ruling)

Neutral citation: [2024] KEHC 2315 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
SUCCESSION CAUSE E69 OF 2023
HM NYAGA, J
MARCH 1, 2024**

IN THE MATTER OF THE ESTATE OF THE WILSON KAMURI NG'ANG'A (DECEASED)

RULING

1. The deceased herein died on 31st January 2022. Subsequently petitions of letters of administration intestate were applied for on 10th May 2023 by Harun Kungu Kamuri and Esther Muthoni Kamuri, being the son and daughter of the deceased respectively. The Petitioners listed the following property as forming the estate of the deceased;
 - a. Gilgil/Gilgil Block 1/7785 (Kekoepy)
 - b. LR No. 6564/6 Original No. 6564/5/2 survey plan No. 237xxx.
 - c. Gilgil/Karunga Block 9/99 (Gitare)
 - d. Eldoret Municipality Block 16 (Kamukunji) 318.
 - e. LR No. 3500 (Block IV/211)
 - f. Plot No. 1317/212/131 – Gilgil Town and SS .
 - g. Gilgil/Karunga Block 9/117 (Gitare Estate)
 - h. Motor vehicle Reg. No. KCG xxxx Toyota Probox
2. Accompanying the Petition were documents to support ownership of the said properties. These included title deeds, a log book and sale agreements.
3. On 3rd July, 2023, on objection to the grant of the Letters of Administration was filed by Martha Waithera Ng'ang'a alias Martha Waithera Gushu and Dominic Ngigi Nganga. The 1st objector stated that she was the widow of Sammy Ng'ang'a Kamuri(now deceased) who was the son of the deceased herein. The objection was premised upon the following grounds;
 - i. The 1st objector is the registered proprietor of the parcel of land known as Gilgil Block 1/7785 Kekoepy as evidenced by the title deed.



- ii. That the 2nd objector is the registered owner of motor vehicle No. KCG xxxx as evidenced by the log book.
4. It was the objector's case that the said properties do not form part of the estate of the deceased herein.
5. On 28th September 2023, the Applicants filed the Summons dated 27th September 2023 in which they sought the following orders:-
 1. That this application be certified urgent and be heard *ex parte* in the first instance.
 2. That pending the hearing and determination of this application *inter partes*, this Honourable court be and is hereby pleased to order and allow the 1st Applicant, Martha Waithera Gushu alias Martha Waithera Nganga to enter, maintain, deal and/or collect rent from the property known as Gilgil/Gilgil Block 1/7785 (Kekopey).
 3. That this Honourable Court be pleased to exclude the properties known as Gilgil/Gilgil Block 1/7785 (kekopey) and motor vehicle registration number KCQ xxxx Toyota Probox from the estate properties in this matter.
 4. That this Honourable Court be pleased to order the 1st Petitioner/Respondent, Harun Kungu Kamuri by himself and/or his representatives and assigns to release motor vehicle registration number KCQ xxxx Toyota Probox to Dominic Ngigi Nganga.
 5. That this Honourable Court be pleased to issue a permanent injunction against the Petitioners/Respondents from interfering with the properties referenced as Gilgil/Gilgil Block 1/7785(Kekopey) and motor vehicle registration number KCQ xxxx Toyota Probox.
 6. That costs of this application be provided for.
6. The Application is supported by the grounds set out on its face and is supported by the Affidavit of the 1st objector/applicant sworn on 27th September 2023.
7. In a nutshell, the Applicant state that they had filed an objection herein, which was never responded to. That they are the registered proprietors/owners of the property set out in their Application. That after the demise of her husband the 1st Respondent took the motor vehicle in question to run errands, but to date has failed to return the vehicle to him. That upon the demise of her husband, the 1st Respondent also took over the control and management of Gilgil/Gilgil Block 1/7785 (Kekopey). The Applicants thus sought orders to have the said properties back to them, as they do not form part of the estate of the deceased herein.
8. In response, the 1st Petitioner/Respondent filed a Replying Affidavit sworn on 12th October, 2023. He depones that the Applicants lack *locus standi* as they are just the spouse and the son of the said Sammy Ng'ang'a Kimuri, a beneficiary to the estate and have not obtained Letters of Administration to that other estate.
9. The Respondent further avers that the motor vehicle in question was unlawfully transferred to the name of the 2nd objector from the name of Sammy Ng'ang'a Kamuri, on 4th April, 2023, after his death on 5th March 2023. That the said vehicle was in physical possession of the Monicah Wanjiku Ng'ang'a, the 1st wife of Sammy Ng'ang'a Kamuri and he only assisted the said Monicah to keep it safe as it was being sought over an alleged loan.
10. The Respondent states that the vehicle belongs to the estate as it was brought using proceeds of sale of the deceased's plot and Sammy Ng'ang'a was entrusted by the family to do the purchase.



11. The Respondent further avers that the property known as Gilgil/Gilgil Block 1/7785 belongs to the deceased has never belonged to the 1st Objector as alleged. That the plot was unlawfully transferred to the name of the 1st Objector on 19th March 2023 after the death of the deceased, as shown by the certificate of official search. That since 219, all rents to the said property were collected by his late brother Sammy and when he died the 1st Petitioner/Respondent was authorised to take over the said duties.
12. The parties filed their respective submissions, which I have duly considered.

Analysis and Determination

13. The gist of the Applicants' Application is that the two properties have never belonged to the deceased herein.
14. The Respondents on the other hand were part of the estate of the deceased and were unlawfully transferred to the Applicants.
15. In regard to the property known as Gilgil/Gilgil Block 1/7785, the 1st Objector/Applicant was registered as the proprietor on 29th March 2023.
16. There is no evidence as to who was the registered proprietor was prior to that. If it was the deceased herein, then the transfer would be deemed unlawful/illegal.
17. It is thus necessary to obtain a history of the proprietorship of that property from the lands office.
18. As for motor vehicle Reg. No. KCG xxxx, the Respondents do not state that it belonged to the deceased's herein. At paragraph 6 of his Replying Affidavit, the 1st Respondent admits that the vehicle was registered in the name of Sammy Ng'ang'a Kamuri and not the deceased herein. The Respondent claims that the said vehicle was bought with proceeds of sale of a plot belonging to the deceased. No evidence to that effect is tendered.
19. As matters stand, the vehicle belonged to Sammy Ng'ang'a Kamuri and not the deceased herein. It is thus not part of the estate of the deceased herein. The person who can raise any complaint over it is the administrator of the estate of the late Sammy Ng'ang'a Kamuri.
20. Therefore, the motor vehicle KCG xxxx can only be litigated as property of the late Sammy Ng'ang'a Kamuri (deceased). If there is any claim by the deceased herein, then the administrators of his estate can make the necessary Application, but not in this file.
21. Consequently, the said motor vehicle registration number KCG xxxx is hereby expunged as being part of the property of the deceased herein. The parties can litigate over it elsewhere.
22. Now back to the other property, Gilgil/Gilgil Block 1/7785. I hereby direct that the Land Registrar provides all the entries regarding the proprietorship of the same, in order to establish if it was ever registered in the name of the deceased herein. Further orders will follow after that.
23. Orders accordingly.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 1ST DAY OF MARCH 2024.

**H. M. NYAGA,
JUDGE.**

In the presence of;



C/A Oleperon

Ms Omondi for Petitioners

Ms Kinuthia for Kipchoge for the Objector

