



In re Estate of Zipporah Nduru M’mbiro (Deceased) (Succession Cause 238 of 2005) [2024] KEHC 4809 (KLR) (18 April 2024) (Ruling)

Neutral citation: [2024] KEHC 4809 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
SUCCESSION CAUSE 238 OF 2005**

TW CHERERE, J

APRIL 18, 2024

IN THE MATTER OF THE ESTATE OF LATE ZIPPORAH NDURU M’MBIRO (DECEASED)

BETWEEN

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JOHN MURIUKI MARETE 1ST PROTESTOR

KABURU MWONGERA 2ND PROTESTOR

AND

STEPHEN MURWANJA ADMINISTRATOR

RULING

1. Zipporah Nduru M’Mbiro (Deceased) died sometimes on 05th May, 1997. Her husband M’Mbiro predeceased her and she was not blessed with children. Her estate comprised of LR. Kiirua/Naari/1661 and LR. Kiirua/Naari/1945.
2. Upon the death of deceased, the Protestors who are grandchildren of Deceased’s co-wife applied and were on 14th October, 2019 issued with Letters of Administration and LR. Kiirua/Naari/1661 which was the only asset that was disclosed was distributed to them in equal shares.
3. When the Administrator/Applicant got wind of the grant, he moved the court vide summons dated 23rd March, 2021 seeking mainly that the grant confirmed on 11th March, 2009 be annulled and/or revoked on the grounds that Deceased had sold LR. Kiirua/Naari/1945 to one Marion Nkoroi M’Ibuuri and bequeathed to him LR. Kiirua/Naari/1661 in his capacity as her nephew with whom she lived until she died.



4. In his affidavit of protest sworn on 14th April, 2023, the 1st Protestor denied that deceased neither sold LR. Kiirua/Naari/1945 to one Marion Nkoroi M'Ibuuri nor bequeathed LR. Kiirua/Naari/1661 to the Administrator/Applicant.
5. Having heard the parties, I found that the grant confirmed in favour of the Protestors was fraudulently obtained and by an order dated 26th January, 2023 revoked it and appointed the Applicant as the administrator of the estate.
6. What therefore remains for determination is the manner in which the estate of the deceased ought to be distributed.

Administrator/Applicant's case

7. Protestor/Applicant stated that the Deceased was his paternal aunt who had taken him in as his son having not been blessed with any children. He confirmed that he is not in occupation of any of the two assets of the deceased but that him together with the 2nd Administrator/Respondent use LR. Kiirua/Naari/1945. He additionally reiterated the contents of his affidavit that Deceased had sold LR. Kiirua/Naari/1661 to one Marion Nkoroi M'Ibuuri (now deceased) and bequeathed to him LR. Kiirua/Naari/1945 in his capacity as her nephew with whom she lived until she died.
8. Stanley Muriungi stated he was Deceased's neighbour and knew the Protestor/Applicant as son of Deceased's brother. He confirmed that 2nd Administrator/Respondent was in occupation of LR. Kiirua/Naari/1945.

Protestors' case

9. 1st Protestor stated that he was grandson of Deceased's co-wife one Maritah Gladys M'Mbiro and 2nd Administrator/Applicant was his step-brother. He confirmed that the Administrator/Applicant was son to Deceased's brother. He similarly confirmed that Administrator/Applicant was not informed concerning the filing of this cause for the reason that Administrator/Applicant is not in occupation of any of the two assets and is according to him not a beneficiary of the estate. He urged that LR. Kiirua/Naari/1661 and LR. Kiirua/Naari/1945 be distributed to him and the 2nd Protestor.
10. 2nd Protestor similarly stated that he was grandson of Deceased's co-wife and 1st Protestor was his step-brother. He also confirmed that the Administrator/Applicant was son to Deceased's brother and was not informed concerning the filing of this cause. He stated that he cultivates both LR. Kiirua/Naari/1661 and LR. Kiirua/Naari/1945 and occupies LR. Kiirua/Naari/1661 whereas the Administrator/Applicant neither uses nor occupies any of the assets. He likewise urged that LR. Kiirua/Naari/1661 and LR. Kiirua/Naari/1945 be distributed to him and the 1st Protestor.
11. It was submitted for the Administrator/Applicant that he lived and was maintained by the deceased and was a dependent under the provisions of Section 29(b) of the *Law of Succession Act* Cap 160 Laws of Kenya entitled to her estate.
12. It was additionally submitted that the Administrator/Applicant who was Deceased's nephew has a higher priority of affinity and consanguinity compared to the Protestors who are step-grandchildren of the Deceased. Reliance was placed on Section 39 of the Act and on *In re the Estate of Joseph Gichuki Riunge (Deceased)* [2016] eKLR where the court reiterated that half siblings do not rank equally to the children of a deceased brother.



13. Concerning distribution, the Administrator/Applicant urged that LR. Kiirua/Naari/1945 be distributed to him and LR. Kiirua/Naari/1661 to one Raphael Gatobu M'Ibuuri to hold in trust for the estate of Marion Nkoroi M'Ibuuri, a purchaser.
14. It was submitted for the Protestors that they were son and grandson of Deceased with the nearest degree of consanguinity to the Deceased that the Administrator/Applicant who is a nephew of the Deceased.

Analysis and Determination

15. I have considered the evidence on record and submissions filed on behalf of the parties and deduced the issues for determination as follows;
 1. Who is entitled to Deceased's estate
 2. Whether this court has jurisdiction to determine the right of Marion Nkoroi M'Ibuuri (a purchaser)

Who is Entitled to Deceased's Estate

16. There is undisputed evidence that Deceased was predeceased by her spouse and died without children. It therefore follows that the persons entitled to Deceased's estate would be the persons mentioned in section 39 of the Act which states as follows; -
 - (1) Where an intestate has left no surviving spouse or children, the net intestate estate shall devolve upon the kindred of the intestate in the following order of priority
 - a. father; or if dead
 - b. mother; or if dead
 - c. brothers and sisters, and any child or children of deceased brothers and sisters, in equal shares; or if none
 - d. half-brothers and half-sisters and any child or children of deceased half-brothers and half-sisters, in equal shares; or if none
 - e. the relatives who are in the nearest degree of consanguinity up to and including the sixth degree, in equal shares.
 - (2) Failing survival by any of the persons mentioned in paragraphs (a) to (e) of subsection (1), the net intestate estate shall devolve upon the State, and be paid into the Consolidated Fund.
17. It is certain that Administrator/Applicant who is deceased's nephew is in the fourth degree of consanguinity to the deceased coming way ahead of the Protestors who are step-grandchildren of the Deceased.
18. It matters not that the Administrator/Applicant is not in occupation and use of the estate for occupation and use do not confer any right of inheritance under the law of Succession.
 2. Whether this court has jurisdiction to determine the right of Marion Nkoroi M'Ibuuri (a purchaser)
19. There is evidence that on 25th October, 1983, Deceased entered into a sale agreement for the sale of LR. KIIRUA/NAARI/1661 to one Marion Nkoroi M'Ibuuri who she put in possession until her family was evicted by the 2nd Protestor.



20. From the foregoing, I find that this court has an obligation to uphold the interests of Marion Nkoroi M'Ibuuri in the distribution of the estate of the Deceased. (See Titus Muraguri Warothe & 2 Others vs. Naomi Wanjiru Wachira Nyeri HCSC No. 122 of 2002 and In re Estate of Joseph Mutua Munguti (Deceased)[2018] eKLR).
21. In the end, the summons for confirmation dated 28th March, 2023 is determined as follows:
1. LR. Kiirua/Naari/1945 shall be distributed wholly to Stephen Murwanja
 2. LR. Kiirua/Naari/1661 shall be distributed to the estate of Marion Nkoroi M'Ibuuri
 3. Amended Certificate of Confirmation of Grant to issue
 4. Each party shall bear its own costs
 5. Mention on 03rd October, 2024 to confirm transmission

DELIVERED AT MERU THIS 18TH DAY OF APRIL 2024.

WAMAE. T. CHERERE

JUDGE

Appearances

Court Assistants - Kinoti/Munene

For Administrator/Applicant - Mr. Kariuki for Mithega & Kariuki Advocates

For 1st & 2nd Protestors - Ms. Gumato for Otieno C. & Co. Advocates

