



In re Estate of Elizabeth Wanjiru Muroki (Deceased) (Succession Cause 3456 of 2003) [2024] KEHC 15452 (KLR) (Family) (9 April 2024) (Ruling)

Neutral citation: [2024] KEHC 15452 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

FAMILY

SUCCESSION CAUSE 3456 OF 2003

EKO OGOLA, J

APRIL 9, 2024

IN THE MATTER OF THE ESTATE OF ELIZABETH WANJIRU MUROKI (DECEASED)

BETWEEN

JAMES KUNGU MUROKI 1ST APPLICANT

EVANSON MUINAMIA MUROKI 2ND APPLICANT

AND

WILLY KAIRU NGARI ADMINISTRATOR

RULING

1. There are two applications before this court. The first is Summons for Confirmation of grant dated 10th January 2023 filed by the applicants. They pray for the following orders:
 - a. That the grant of Letters of Administration made to Willy Kairu Ngari in this matter on the 22nd day of March 2022 be confirmed.
 - b. That on the 1st day of November 2022, the court made an order that the applicants be at liberty to apply for letters of confirmation of grant.
 - c. That the costs of this application be in the cause.
2. The second is Summons for Confirmation of Grant dated 16th June 2023 filed by the administrator. He prayed for the following orders:-
 - a. Spent;
 - b. That the grant of letters of administration intestate made to the said Willy Kairu Ngari in this matter on 22nd March 2022 be confirmed as per the attached schedule.



- c. That I was granted 30 days upon issuance of the grant to file the application for confirmation but I was unable to reach my siblings.
 - d. That the costs of this application be costs in the cause.
3. To put matters into context, the deceased died intestate on 29th June 2003. She had no children of her own. She however had a co-wife who had six children. They were listed as the beneficiaries of her estate. The beneficiaries are as follows:-
 - i. Tabitha Wambui Muroki- co-wife
 - ii. James Kungu Muroki-step-son
 - iii. Wilson Nganga Muroki-stepson
 - iv. John Kinuthia Muroki-stepson
 - v. Evanson Muinamia Muroki-stepson
 - vi. Serah Wambui Ngigi- stepdaughter
 - vii. Teresia Ngeci Mukubu-stepdaughter
4. The deceased estate comprised of the following assets:- Karai/Gikambura/700 and Karai/Russigetti/T.143.
5. On 19th January 2005, a Certificate of Confirmation of grant was issued to Tabitha Wambui Muroki and according to the mode of distribution, she was to inherit both properties. Tabitha Wambui Muroki died on 1st November 2011. The grant was revoked by this court on 22nd March 2022, and a fresh grant was issued to Willy Kairu Ngari who is the grandson of the deceased stepsister.
6. According to the administrator, the beneficiaries of the deceased estate are the step-grandchildren of the deceased, that is, himself, Janet Njoki Ngari and Mary Njeri Karanja (who has renounced her rights to benefit from the estate) The administrator's proposed mode of distribution is that the entire estate devolve to him.
7. On the other hand, the applicants' proposed mode of distribution is that Karai/Gikambura/700 be equally shared between them and Wilson Nganga Muroki and John Kinuthia Muroki, while Karai/Russigetti/T.143 be transferred to the 2nd applicant to hold in trust for James Kungu Muroki, Wilson Nganga Muroki, and John Kinuthia Muroki.
8. The administrator argues that he lies in the 4th degree of consanguinity to the deceased. Therefore, he has a priority claim to the estate of the deceased. Furthermore, the administrator deposed that the deceased lived separately from the applicants and their siblings. Also, the applicants did not provide any assistance in the deceased funeral arrangements.
9. The applicants argue that the deceased late husband Muroki Gateu Muinamia was a polygamous man. The property known as Karai/Gikambura/700 belonged to the net estate of Muroki Gateu Muinamia (deceased) and the same was to be shared between his two wives as per the Certificate of confirmation of grant issued on 4th November 1992 in Succession Cause no. 5 of 1990. Hence, half a portion of the said property should devolve to the deceased co-wife's children.
10. The applicants deposed that Karai/Russigetti/T.143 exclusively belonged to Tabitha Wambui Muroki and should be bequeathed to the applicants and their siblings.



Determination

11. I have considered both summons for confirmation of grant, the rival submissions and the entire record of the court.
12. The Ruling of this court dated 22nd March 2022 determining the Summons for revocation of grant issued to Tabitha Wambui Muroki this court held that Tabitha Wambui Muroki was guilty of material non-disclosure since it was never disputed that the administrator was the deceased step-grandson and there was evidence that he was not a stranger to the applicants as contended since the administrator fully participated in the deceased funeral arrangements.
13. The original title deed to Karai/Gikambura/700 was produced in court showing that the deceased was the registered owner of the said land. Despite lodging a caution on the land, on 8th December 2009, the property was transferred to Tabitha Wambui Muroki on the strength of the Certificate of Confirmation of Grant dated 19th January 2005. Since the grant issued to Tabitha Wambui Muroki was revoked, all subsequent transactions are null and void.
14. It must be noted that according to the green card, Karai/Gikambura/700 was registered to Muroki Gate in the year 1964. It was transferred to the deceased on 16th January 2003 and on 8th December 2009, the property was transferred to Tabitha Wambui Muroki, on the strength of the Certificate of Confirmation of grant issued to her. Since the said grant was revoked, Karai/Gikambura/700 reverts to the deceased as the registered owner.
15. Furthermore, regarding Karai/Russigetti/T.143, there is no evidence adduced by the applicants that the said property was registered in the name of Tabitha Wambui Muroki. On record is a letter from the County Government of Kiambu dated 22nd October 2003 stating that Karai/Russigetti/T.143 was allocated to the deceased under the ballot system on 5th May 1994.
16. From the foregoing, the argument that both properties once belonged to the deceased husband and were to devolve to the two wives is unfounded. Hence, Karai/Russigetti/T.143 and Karai/Gikambura/700 both belonged to the deceased prior to her death.
17. So, who should inherit the properties, the step grandson or the stepchildren? Section 39 of the [*Law of Succession Act*](#) provides for how a deceased estate should be divided if the deceased has died intestate and has left no surviving spouse or children

“(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.”



18. It is not disputed that the administrator’s grandmother was the deceased stepsister. His grandmother and the deceased shared the same father but had different mothers. According to Section 39(1)(d) the deceased estate should devolve to the deceased half-brother and half-sister and any of their children before it could be transferred to the deceased co-wife and/or her stepchildren. That is, the administrator has priority.
19. The upshot is that the Summons for Confirmation of Grant dated 10th January 2023 is dismissed. The Summons for Confirmation of Grant dated 16th June 2023 is allowed. A Certificate of Confirmation of grant to issue to Willy Kairu Ngari. The mode of distribution of the deceased estate be as per paragraph 6 of Willy Kairu Ngari’s affidavit dated 16th June 2023. Costs be in the Cause.
- Orders accordingly.

DATED AND DELIVERED IN NAIROBI THIS 9TH DAY OF APRIL 2024

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E.K. OGOLA

JUDGE

In the presence of:

N/A for the Applicants

Ms. Nderitu for the Administrator

Ms. Libertine Oriel Court Assistant

