



**In re Estate of Muthike Muriuki (Deceased) (Succession Cause
37 of 2018) [2024] KEHC 4473 (KLR) (8 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 4473 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
SUCCESSION CAUSE 37 OF 2018
RM MWONGO, J
APRIL 8, 2024**

IN THE MATTER OF THE ESTATE OF MUTHIKE MURIUKI (DECEASED)

BETWEEN

**HAWA MUTIGE KITHAE 1ST APPLICANT
SOPHIA WAWIRA GICHIRA 2ND APPLICANT
JANE WAKUTHII KAMAU 3RD APPLICANT
AGNES WANJIKU GICHIRA 4TH APPLICANT
MARY WANJIRA MUTHIKE 5TH APPLICANT**

AND

ERNEST KABIRI GICHIRA RESPONDENT

RULING

1. The deceased died on 6th April 2000. He was survived by twelve sons and a daughter. His property included L.R. Ngariama/Lower/Ngariama/1299 measuring 7.215 Ha (Approximately 17.828 Acres). A grant of letters of administration was issued to Ernest Kaburi Gichira one of the deceased's sons.
2. The grant was confirmed on 25 July 2016. Distribution of the deceased's land was indicated as follows:
 1. Ernest Kaburi Gichira 2 Acres
 2. John Nyaga Gichira 2 Acres
 3. Peter Chomba Muthike 2 Acres
 4. Francis Mugo Muthike 2 Acres
 5. Simon Kinyua Muthike 2 Acres



6. Titus Muriithi Gicira 2 Acres
 7. Joseph Wachira Muthike 2 Acres
Total 14.00 Acres (5.66 Ha)
 8. Hawa Mutige Kithae
 9. Sophia Wawira Gichira
 10. Jane Wakuthii Kamau Remaining 3.928 Acres
 11. Agnes Wanjiku Gichira Portion (11.549 Ha)
 12. Mary Wanjira Muthike
3. Thus, the sons got 2 Acres each whilst the daughters together got the remaining of 3.928 Acres. This means that each daughter would be entitled to 0.765 Acres each.

Dispute

4. By an application dated 30.12.2019, the daughters sought an order directing the respondent/administrator to cause the Land Parcel No. Ngariama/Lower/Ngariama/1299 to be surveyed in order to distribute to the applicants their entitlement. They argue that no sub-division has been done.
5. According to the applicants, the administrator has relied on boundaries which were placed on site before the confirmation of grant. The result has been that the portion to be shared by the applicants is less than that stated in the confirmed grant. Further, they complain that the sub-divisions on the ground have hived the whole of the service road from the applicants' portion, instead of hiving it from among all beneficiaries' portions.
6. In response, the administrator through a replying affidavit asserts in substance that it is quite clear in the confirmed grant that the portion allotted to the sons is specified as 2 acres each. On the other hand, there is no specified acreage allotted to the sisters, who were to share the remaining portion equally.
7. Further, the administrator points out that the survey and apportionment had been done long before the deceased died, and "Mukungugu" trees planted to demarcate the respective portions allocated to the deceased's family.
8. Prior to the filing of the said application, the parties had entered into a consent on 27.5.2019 which was adopted by the court. The consent, recorded in the proceedings following an application by the administrator in which the daughters were the respondents, is as follows:

"By consent:

1. The respondent (the daughters) do appoint a registered surveyor to visit land Parcel No. Ngariama/ Lower/ Ngariama/1299 and confirm the size of the share of each beneficiary on the ground as per the confirmed grant dated 16.8.2017.
The surveyor to prepare a report and file it in court.
2. All the beneficiaries be present during the visit by the surveyor.
3. If the shares on the ground for each beneficiary are as per the confirmed grant, the parties shall sign the Land Control Board forms for subdivision.



4. If the shares for the beneficiaries are not as per the confirmed grant, survey work on the ground shall be done.”

The parties present signed the consent in the proceedings making their consent personal to each of them.”

9. After the survey was done and the report filed in court, the applicants remained aggrieved because from their portion, some amount of land was deducted for the road that accesses the other portions. The survey shows the seven (7) sons’ portions as 0.80 Ha (1.9768 Acres) and the remaining portion as 1.371 Ha (3.3877 Acres). Clearly, all plots have contributed to the access road serving the portions.
10. I have seen the Survey Report filed on 13 November 2019. It indicates that all beneficiaries were present on site. The report indicates that “The boundaries are well marked by full-grown ‘Mukungugu trees’ and hedges, and the beneficiaries have also built-up permanent houses. They are served by a 9m wide murrum road.
11. From the plan drawn by the surveyor, it is evident that Plot No. Ngariama/Lower/Ngariama/1299 is a rectangular shaped parcel. It is served by a main access road along its narrower (width) side. Accordingly, the only way in which the parcel could be sub-divided without at all “eating into “ the daughters’ portions for road access would be to sub-divide the land laterally along the length of the land. The result would be to divide the land into twelve (12) extremely narrow but long strips of land each abutting and served by the main access road, but along the width of the parcel. This appears unreasonable, uneconomical, and frankly, untenable.
12. According to the Survey Report the sub-divisions are marked by full grown “Mikungugu” trees and they have grown hedges. It is not disputed that these trees and hedges are in existence, and have been there for a period. Further, the indication by the surveyor that there are houses built on some of the subdivisions, has not been controverted or disputed.

Conclusion & Disposition

13. It appears to me that the option of sub-dividing the portions in any other manner is not sustainable on the following grounds:
 - a) narrow length of plots that would result in them being un-useful and economically not viable, and
 - b) interference with existing developments in the portions that have established houses.
14. I note that the consent entered into by the parties cannot be achieved because only the portions indicated in the grant for the brothers is exactly specified as two (2) acres. The portion specified for the daughters is indicated as the “remaining portion”, and the exact acreage for each such portion is not specified. Thus, the confirmed grant did not take into account that road access must be provided from the original plot of land.
15. In the circumstances, since the filed Survey Plan has made deduction for road access reserve from all portions, that is the best option in the present circumstances.
16. Accordingly, I am persuaded that the sub-division option provided by the Surveyor is the least disruptive and most tenable option in the given circumstances, and I would allow it.
17. In the result, the applicants’ application is declined and is hereby dismissed. The court hereby adopts the sub-division based on the Survey Plan filed on 13th November 2019.



18. It is so ordered. Each party will bear their own costs.

DATED AT KERUGOYA ON THIS 8TH DAY OF APRIL, 2024

R. MWONGO

JUDGE

Delivered in the presence of:

Ndolo for Applicants

Kagio for Respondent/Administrator

Murage, Court Assistant

