



**In re Estate of Naftary Uiru Kagwara alias Naftary Uiru Kagwara “1” (Deceased)
(Succession Cause 7 of 2018) [2024] KEHC 6332 (KLR) (20 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 6332 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
SUCCESSION CAUSE 7 OF 2018**

A MSHILA, J

MAY 20, 2024

BETWEEN

NANCY WAIHERA KAGWARA APPLICANT

AND

SIMON MUNGAI UIRU 1ST RESPONDENT

ESTATE OF ALICE NYAKIO UIRU 2ND RESPONDENT

RACHEL MOI UIRU 3RD RESPONDENT

WINNIE WAIRIMU UIRU 4TH RESPONDENT

LUCY WANJIKU UIRU 5TH RESPONDENT

ESTATE OF JANET WANJIRU UIRU 6TH RESPONDENT

ESTATE OF GRACE WANJUHI UIRU 7TH RESPONDENT

RULING

1. *Vide* a ruling delivered on 30th April, 2019 by Hon. Lady Justice C. Meoli, the Court in paragraph 15 of the said ruling ordered the Kiambu District Surveyor to visit the suit property in the presence of all beneficiaries and their advocates and to prepare at least 3 proposals as to how the suit land may be sub-divided in a manner that takes into account all developments thereon which is economically viable and equitable and as much as possible ensuring that all beneficiaries end up holding roughly equal portions of land.
2. The said order was extracted and the same was issued on 8th July, 2019. The District Surveyor through his letter dated 31/10/2019, invited all parties to the site on 20/11/2019.
3. On 24th February, 2020, the County Surveyor Joseph D. Muchungu filed his letter dated 21st February, 2020, stating that the Surveyors made a site visit on 6th December, 2019 on parcel no. Kiambaa/



ruaka/113 together with the beneficiaries and their advocates. Their ground findings as per 'Plan A' were that the parcels marked No. 1,3,4 and 5 are all developed with permanent structures by the estate of Peter Kagura which was represented by Nancy Waithira Kagura. That parcel marked No. 6 has a permanent house occupied by Winnie Wairimu Uiru. That parcel marked No. 7 has a permanent building occupied by Alice Nyakio Uiru. That parcel marked No. 8 has permanent and semi-permanent buildings all belonging to Rachael Moi Uiri. Alice, Winnie and Rachael share a portion next to the main road which has permanent structures and a swimming pool. Parcel marked No.9 has a permanent and a semi-permanent building occupied by Simon Mungai Uiru. The letter stated that the beneficiaries of the estate of Janet Wanjiru Uiru and Grace Wanjohi Mbugua have not developed nor settled on the land. All the other parcels marked on the plan were cultivated with maize and trees.

4. As per 'Plan B' each beneficiary is to get 0.32 Ha (0.79 acre) after deducting the acreage of the road as follows;-The estate of Peter Kagura has occupied parcel marked 1,3,4 and 5.Winnie Wairimu Uiru will occupy parcel No. 6 and 13.Alice Nyakio will get parcel No. 7 and 14.Rachel Moi Uiru will occupy parcel No. 8 and 15.Simon Mungai Uiru will occupy parcel No. 9 and 19.

(The land with the swimming pool has been sub-divided amongst Winnie, Alice and Rachel to enable them have direct access to the main road.)

The estate of Janet Wanjiru Uiru alias Jane Wanjiru Kagunya will occupy parcel no. 10 and 16.The estate of Grace Wanjohi Mbugua will occupy parcels no. 11 and 17.Lucy Wanjiku Uiru will occupy parcel no. 12 and 18.

5. In regard to parcel no. 2 it was proposed that the same is not constructed and that it is fair that the same is owned by the estate of Janet, Grace and Lucy as it is near the main road and the other parcels allocated to them are on sloppy side and far from the main road. That they can develop it together or sell as it is too small to be sub-divided amongst them.
6. On 29th September, 2020, the court issued an order that the Surveyor file two more proposals for the subdivision of parcel no. Kiambaa /ruaka/113 as per the court orders of 30/4/2019 paragraph 15.
7. Subsequently, on 17th March, 2023, B. K. Gitonga from the Kiambu Survey Office filed two more proposals being Proposal no 2 and Proposal no. 3.
8. Parties were directed to file and exchange their written submissions in relation to the Survey letter dated 17th March, 2023. Hereunder is a summary of the respective parties rival submissions.

Applicants Written Submissions

9. Nancy Waithera and Simon Mungai Uiru filed their submissions on 12/05/2023. They submit that the letter dated 17th March, 2023 has not mentioned the dates that the alleged site visits were made. Further that the proposal 2 and 3 were carried out in the absence of the parties and their advocates and that the said proposals do not show the size of the alleged sub-divisions and neither do they show which beneficiary has been allocated what land. That the buildings and developments already on the land have not been mentioned, that the said proposals do not show what size of roads have been provided and lastly, that the said proposals do not show that farming is being done and how the businesses being carried out by beneficiaries will be affected. The two proposals were said to be incomplete as it does not assist the parties to identify their property as such the Surveyors evidence is not credible as he did not include the measurements when he visited the land. The court was urged to order for another site visit which shall comply with the orders of the court.



2nd Respondent Submissions

10. Alice Nyakio Uiru who is now deceased had before her demise filed her submissions on 15/06/2023 . She submitted that Plan A is not clear who was proposed to settle where and the size of the portions causing parties to assume facts. The survey was said to be silent on the issue of the size of the access road and what is left for each beneficiary after the same has been hived. She submitted that the survey report should be amended and be specific so as to aid the court by disclosing the names of each beneficiary as positioned on the ground and the size of the land to be inherited by each beneficiary, the size and effect of the access roads. Plan B was said to have a schedule indicating how each of the beneficiaries is inheriting and his or her portion. The court was urged to adopt plan B. With regard to Plan 3, it was submitted that the same is not clear factually as it does not guide on the mode of distribution. The same was rejected. They urged the court that Peter Kaguara and Naftary Uiru inherits their mother's share in equal share where her home is situated and where she was buried.

3Rd, 4Th, 5Th, 6Th, And 7Th Respondents Submissions

11. The 3rd, 4th, 5th, 6th, and 7th Respondents submitted that proposal 1 consisting of plan A and plan B purports to allocate various plots to various beneficiaries over and above the mandate given by the court. The access road between plot 8 and 9 were said to be unnecessary. They submitted that the same cannot be adopted with necessary changes. In regard to proposal 2, it was submitted that the same is untenable as it does not take into consideration the developments thereon and will lead to massive demolitions if adopted. As for proposal 3, the same was said to be an adaptation of proposal 1 with relevant modification. It proposes 16 subdivisions and caters for all beneficiaries and caters for all developments. Lastly, that deceased beneficiaries to be substituted with their personal representatives to enable smooth administration of the estate. The court was urged to adopt proposal 3 and the marked out plots be shared as follows;-1A+ 1B+1C-Lucy Wanjiku Uiru2A-Nancy Waithera Kaguara3A+3B-Winnie Wairimu Uiru4A+4B –Naftary Uiru Nyakio and Peter Kaguara Nyakio5A+5B-Rachel Moi Uiru6A+6B-Simon Mungai Uiru7A+7B-Rahab Wandia Mbugua and Naftali Kamau Mbugua8A +8B-Lucy Wandia Kagunya and George Thogo Kagunya

Issues For Determination

12. Having perused the Survey Proposals and having read the parties written submissions the only issue framed by this court is which report presents the most suitable proposal on the mode of distribution of the suit property.

Analysis

13. The Ruling dated 30th April, 2019 delivered by the Hon. Lady Justice Meoli distributed the estate of the deceased equally amongst the eight beneficiaries each to get of 0.862acres as set out hereunder.
- i. Simon Mungai Uriu – 0.8625 acres
 - ii. Alice Nyakio Uriu - 0.8625 acres
 - iii. Rachel Moi Uriu – 0.8625 acres
 - iv. Winnie Wairimu Uriu - 0.8625 acres
 - v. Lucy Wanjiku Uriu - 0.8625 acres
 - vi. Estate of Peter Kaguara - 0.8625 acres



- vii. Estate of Jane Wanjiru Uriu alias
Jane Wanjiru Kagunya - 0.8625 acres
- viii. Estate of Grace Wanjuhi Mbugua - 0.8625 acres
14. The court also directed that Kiambu County District Surveyor to visit the suit premises and to prepare and submit three (3) proposals to support the distribution ‘in a manner that takes into account all the developments thereon and that it is economically viable and equitable and as much as possible ensuring that all beneficiaries end up holding roughly equal portions of land.’ There are now three (3) proposals on record and it is not in dispute that all parties are in agreement that the first survey report was not in conformity with the Order of 30th April, 2019 and the Surveyor was ordered to prepare two (2) more reports which have been duly submitted.
15. The Applicants application is that none of the proposals were to their satisfaction as the parties were not in attendance during the site visits and that the portions had been reduced contrary to the Order of 30/04/2019; she prayed that fresh survey reports be prepared. The 2nd Respondent urged the court to adopt plan B. The other remaining Respondents had opted for Plan 3.
16. The law that guides this court is found under the provisions of Rule 73 of the Probate and Administration Rules which reads as follows;
- “Nothing in these Rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.”
17. Whilst this Court has taken into consideration the proposal made by the Applicant it is this courts considered view that to make another order for fresh visits and fresh reports would not be in the best interest for the ends justice; reason being from the submissions on record it was stated that this would be an exercise in futility; this court concurs that the parties and advocates will indeed be in attendance at the fresh site visit but it is apparent that the parties will never come to a consensus on any fresh proposals due to the vested self-interests and other reasons best known to the parties herein; such an order will indeed entail that the litigation herein will never come to an end.
18. This court reiterates that it is vested with inherent powers to make such orders as may be necessary to meet the ends of justice; from the material placed before this court it is satisfied that the survey report Plan ‘B’ proposed by the surveyor factors in the access roads; This plan has a schedule and indicates the portions each beneficiary is to get 0.32 Ha (0.79 acre) this arises after deduction of the acreage of the road; and although this reduces the land parcel portions this plan is found to be the most equitable, suitable and a viable mode of distribution;
19. The schedule is as follows;
- i. The estate of Peter Kagura has occupied parcel marked 1,3,4 and 5.
 - ii. Winnie Wairimu Uiru will occupy parcel no. 6 and 13.
 - iii. Alice Nyakio will get parcel no. 7 and 14.
 - iv. Rachel Moi Uiru will occupy parcel no. 8 and 15.
 - v. Simon Mungai Uiru will occupy parcel no. 9 and 19.
(The land with the swimming pool has been sub-divided amongst Winnie, Alice and Rachel to enable them have direct access to the main road.)



- vi. The estate of Janet Wanjiru Uiru alias Jane Wanjiru Kagunya will occupy parcel no. 10 and 16.
 - vii. The estate of Grace Wanjohi Mbugua will occupy parcels no. 11 and 17.
 - viii. Lucy Wanjiku Uiru will occupy parcel no. 12 and 18.
 - ix. Parcel no. 2 it was proposed that the same is not constructed and that it is fair that the same is owned by the estate of Janet, Grace and Lucy as it is near the main road and the other parcels allocated to them are on sloppy side and far from the main road; both can develop it together or sell as it is too small to be sub-divided amongst them.
20. The portions allocated to deceased person shall be distributed to their appointed legal representatives.

Findings And Determination

21. For the forgoing reasons this court makes the following findings and determinations;
- i. This Court finds that Plan B is the most suitable equitable and viable mode of distribution;
 - ii. Confirmation of the Grant shall be in accordance with Plan B
 - iii. Parties at liberty to apply.
 - iv. This being a family matter each party to bear their own costs.

Orders Accordingly

DATED SIGNED AND DELIVERED VIA TEAMS AT KIAMBU THIS 20TH DAY OF MAY, 2024.

A. MSHILA

JUDGE

In the presence of;

Mourice – C/A

Miss Kibebo for the Beneficiaries

Were H/B for Musungu for Alice Nyakio

Wanjohi for 1st & 2nd Applicants

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