



**In re Estate of Peter Ngugi Muchai (Deceased) (Succession Cause 136 of 2015) [2024] KEHC 4721 (KLR) (7 May 2024) (Judgment)**

Neutral citation: [2024] KEHC 4721 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIVASHA  
SUCCESSION CAUSE 136 OF 2015**

**GL NZIOKA, J**

**MAY 7, 2024**

**IN THE MATTER OF THE ESTATE OF THE PETER NGUGI MUCHAI (DECEASED)**

**BETWEEN**

**CHRISTINE MWIKALI SAVANI ..... ADMINISTRATOR**

**AND**

**JUDY WANGECHI NJUGUNA ..... ADMINISTRATOR**

**JUDGMENT**

1. The subject matter herein is a Chamber Summons application dated 29<sup>th</sup> June 2023, filed by the 2<sup>nd</sup> Administrator. The same has been opposed by the affidavit of the objector, one Judy Wangechi Njuguna, the 1<sup>st</sup> administrator, dated 21<sup>st</sup> July 2023. The subject grant for confirmation is said to be dated 23<sup>rd</sup> May 2019.
2. The background facts of the matter are that, the deceased Peter Ngugi Muchai died on 3<sup>rd</sup> July 2015. Subsequently, the 1<sup>st</sup> administrator applied for and was granted Letters of Administration dated 3<sup>rd</sup> November 2015, and confirmed on 20<sup>th</sup> September 2016.
3. However, on 8<sup>th</sup> March 2017, the 2<sup>nd</sup> administrator Christine Mwikali Savani filed summons for revocation of the letters of administration. By a consent entered into by the parties on 14<sup>th</sup> December 2017, the parties agreed *inter alia* that, the grant issued herein be revoked and a fresh grant be issued in the names of the two administrators.
4. It was further agreed that, the objector/applicant was to apply for confirmation of grant indicating the mode of distribution, while the petitioner/respondent could, if she opposed the mode of distribution, file an affidavit proposing her preferred mode of distribution. Finally, the beneficiaries were agreed on as:
  - a. Judy Wagechi Njuguna



- b. Gerald Maison Njuguna
  - c. Christine Mwikali Sevani
  - d. Martin Muchai Ngugi aka Martin Ngumbao Onywoki
5. It is evident from the court file that counsels for both parties endorsed the subject consent.
  6. The 2<sup>nd</sup> administrator/objector did not file an application for confirmation of grant as stated in the consent but instead filed an application dated 11<sup>th</sup> April 2018, to set aside the consent agreement dated 14<sup>th</sup> December 2017. In the meantime, a fresh grant of Letters of Administration was issued to both administrators herein.
  7. The application for setting aside the consent dated 14<sup>th</sup> December 2017, was heard inter parties and by a ruling delivered on 12<sup>th</sup> May 2021, the same was dismissed. The parties were directed to set down the matter for viva voce examination on the affidavits and documents tendered. Further, the hearing of various dispositions was to be tested through cross-examination on a date fixed in not more than 60 days from the date of that order.
  8. Apparently, the matter did not proceed to full hearing as directed by the court. It was then referred to mediation. However the court was informed that the mediation was not successful. The matter was then listed for hearing on 20<sup>th</sup> July 2023. I do note the parties did not proceed with formal hearing instead, the objector to the summons for confirmation of grant filed an affidavit of protest. The applicant then sought leave to respond thereto and the leave was granted. The parties then filed their respective submissions. On 25<sup>th</sup> January 2024, the parties highlighted the submissions.
  9. Having considered the materials before the court, two issues arise for consideration, namely who the beneficiaries of the estate of the deceased are and secondly the mode of distribution of the assets of the deceased.
  10. As regards the first issue I find that, the 2<sup>nd</sup> administrator submits that she is a lawful wife to the deceased and remained as such up to the time of his death. That her son is a biological son, as such both are beneficiaries under section 29 of the [\*Law of Succession Act\*](#).
  11. That to the contrary, the 1<sup>st</sup> administrator has not proved she was lawful married to the deceased and that her child was a biological child of the deceased. As such under section 29 of the [\*Law of Succession Act\*](#), they are not dependents.
  12. Having considered the rival arguments on the subject issue of dependents, I find that, on the 14<sup>th</sup> December 2017, the parties herein entered into a consent settlement/agreement wherein they identified beneficiaries as the two administrators and their children. The 2<sup>nd</sup> administrator applied to set aside that consent and that application was dismissed. Therefore that consent is binding on the parties and the beneficiaries names there are thus recognized as such for the purpose of section 29 of the [\*Law of Succession Act\*](#).
  13. Even if the court were to lift the veil on that consent, it suffices to note that the Letters of Administration dated 23<sup>rd</sup> May 2019, which the 2<sup>nd</sup> administrator seeks to confirm were issued to both the 1<sup>st</sup> and 2<sup>nd</sup> administrator therefore the 2<sup>nd</sup> administrator cannot seek to have the letters confirmed in favour of a stranger who is named as an administrator. Indeed that grant was issued to both administrators on the strength of the consent that recognized both administrators as beneficiaries of the Estate of the deceased. Pursuant to the aforesaid consent dated 14<sup>th</sup> December 2017, I confirm



that the four beneficiaries named therein be and are hereby recognized as beneficiaries of the Estate of the deceased and resolves that issue.

14. The second issue is the proposed mode of distribution. The 2<sup>nd</sup> administrator argues that, the only beneficiaries entitled to the Estate is herself and her son. The 1<sup>st</sup> administrator on the other hand argues that, both administrators are beneficiaries of the Estate and provisions should be made for both of them.
15. This issue of mode of distribution is connected to the issue of dependants. The moment the court recognizes the dependants then they become entitled to benefit from the Estate of the deceased. As such the averments in the affidavit in support of the summons for confirmation of grant where the applicant avers that, the only beneficiaries, are herself and her son, are not tenable in the face of the consent of 14<sup>th</sup> December 2017. Consequently the proposal that funds under the Pension No. APN/PC0000274948 be distributed equally between Christine Mwikali Savani and her son Martin Muchai Ngugi aka Martin Ngumbao Munyoki is not tenable. The interest of the other beneficiaries must also be catered for.
16. In the given circumstances, taking into account, these are two families of one wife and a child each, it is only fair, just and equitable that, the Estate be divided on equal measures. I therefore direct that each administrator and her son be given 50% of the Estate of the deceased. If there is money which had already been withdrawn, then that sum of money, alleged to be Kshs 100,000 already withdrawn by the 1<sup>st</sup> administrator should also be taken into account.
17. Those then are the orders of the court

**DATED, DELIVERED AND SIGNED ON THIS 7<sup>TH</sup> DAY OF MAY 2024**

**GRACE L. NZIOKA**

**JUDGE**

In the presence of:

N/A for the 1<sup>st</sup> administrator

Ms. Amani Ndungu for the 2<sup>nd</sup> administrator

Ms. Ogutu: Court Assistant

