



**In re Estate of Richard Njoka Murwamwara alias Richard Njoka (Deceased) (Miscellaneous Succession Application 36 of 2011) [2024] KEHC 8930 (KLR) (24 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 8930 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT EMBU  
MISCELLANEOUS SUCCESSION APPLICATION 36 OF 2011  
LM NJUGUNA, J  
JULY 24, 2024  
IN THE MATTER OF THE ESTATE OF RICHARD  
NJOKA MURWAMWARA ALIAS RICHARD NJOKA**

**BETWEEN**

**ODARIA WANJA ..... 1<sup>ST</sup> APPLICANT  
ELIZABETH WAMBURA ..... 2<sup>ND</sup> APPLICANT  
LUCY MARIGU ..... 3<sup>RD</sup> APPLICANT  
AGNES NJOKI ..... 4<sup>TH</sup> APPLICANT  
EUNICE KAARI ..... 5<sup>TH</sup> APPLICANT  
CATHERINE RIIMI ..... 6<sup>TH</sup> APPLICANT  
BEATRICE GICUKU ..... 7<sup>TH</sup> APPLICANT  
FLORA THAARA ..... 8<sup>TH</sup> APPLICANT**

**AND**

**CHARLES KINYUA NJOKA ..... RESPONDENT**

**RULING**

1. The applicants filed summons dated 11<sup>th</sup> August 2023 seeking the following orders:
  1. That the orders by Hon. D.O. Onyango in Runyenjes SRM’s Succession No. 61 of 2006 on 06<sup>th</sup> December 2007 confirming the grant be reviewed and/or set aside;
  2. That the orders by Hon. D.O. Onyango in Runyenjes SRM’s Succession No. 61 of 2006 on 06<sup>th</sup> January 2009, rectifying the grant be reviewed and/or set aside;



3. That the orders by Hon. D.O. Onyango in Runyenjes SRM's Succession No. 61 of 2006 on 18<sup>th</sup> February reinstating the grant issued on 06<sup>th</sup> December 2007 be reviewed and/or set aside;
  4. That the following assets which were deliberately left out of the estate be included:
    - i. Shares in the fully developed plot no. 187 Runyenjes;
    - ii. Shares in the fully developed plot number 147 Runyenjes;
    - iii. All the rental income from the above plots from the year 1994 when the deceased died, to date; and
    - iv. All tea income from the named properties from 1994 when the deceased died, to date.
  5. That all the applicants herein be appointed as co-administrators of the deceased's estate with the respondent;
  6. That the succession cause be heard de novo; and
  7. That costs of this summons be provided for.
2. The application is premised on the grounds that the grant was obtained through misrepresentation of facts to the court and that the daughters of the deceased were not involved in the process. That at the time of confirmation of the grant, the schedule of distribution as proposed was amended by hand and without the knowledge of the daughters of the deceased whose share in the estate was reduced to 1 acre while the sons of the deceased got the remaining portion. It was their case that the court erred in confirming the grant based on summons that had been corrected by hand while in court.
  3. That the respondent is the only one enjoying the rental proceeds from the 2 properties in Runyenjes and has refused to include the applicants. That the respondent has also refused to give the applicants part of the earnings from the tea planted on parcel no. Kagaari/Kanja/1909. The applicants argued that their brothers are benefiting from the estate and they have denied them access to the properties which are continually generating substantial income. That the matter was placed before Hon. Justice Muchelule who ordered that it be heard *viva voce*, but the Runyenjes court record was not available at the time, a fact which the applicants' brothers have used to create further delays.
  4. They stated that following issuance of the grant, the applicants and their brothers agreed on a mode of distribution but the respondent, without the applicants' knowledge, changed the mode of distribution. That when the succession proceedings were instituted, the applicants' brothers unfairly proposed that the applicants be given 2 acres jointly while the sons of the deceased benefited from the remaining 10 acres. They urged the court to set aside the said orders and distribute the estate according to the law.
  5. Through a replying affidavit sworn on 22<sup>nd</sup> August 2023, the respondent's advocate deposed that the application is an abuse of the court process since several of their applications have been dismissed in this matter. That Order 10 and 45 of the [Civil Procedure Act](#) are not applicable in this case since the application for review comes 16 years after the fact and, in any event, the applicants have not demonstrated that there are new and important facts or evidence or error apparent on the face of the record. He urged the court to allow distribution of the estate since there is no valid reason to unsettle it.
  6. The application was canvassed by way of written submissions.
  7. The applicants submitted that the deceased was survived by 11 children who should all be beneficiaries in his estate. That the certificate of confirmation of grant is not clear on the portions that should be



inherited by the beneficiaries since the changes to the mode of distribution were made by hand and adopted by the court. That the respondent moved the court alone, without involving the applicants and sought rectification of the certificate of confirmation. That the applicants were not served with the application and the court noted that the application was not objected to and it granted the prayers. That the court issued a certificate of confirmation of grant that does not reflect the position as prayed in the summons for confirmation and its supporting affidavit.

8. That the certificate of confirmation was amended twice and both amended documents conflict one another, and without involving the applicants. They submitted that some properties of the deceased as named in the summons were not included in the succession proceedings but the respondent continues to benefit from them, excluding the other beneficiaries. They urged the court to grant them justice through the power bestowed upon it by Article 159(2)(d) of the *Constitution* so that they are not discriminated upon based on their gender. That the form taken to bring their grievances before the court should not supersede the discretion of the court to do justice since they have fought for their inheritance for more than 14 years.
9. The respondent submitted that the matter is not ripe for review since there is no error apparent on the face of the record. That the application is an abuse of the court process and it should be dismissed. It was his submission that there is no basis for reviewing the orders of Hon. D.O. Onyango in Runyenjes SRM's Succession No. 61 of 2006. That the applicants participated in the proceedings that led to rectification of the certificate of confirmation of grant. That the applicants' contention is that their shares are smaller but they failed to appeal against the decision of the trial court within the stipulated time. As for the applicants' prayer that the matter be heard de novo, he submitted that they have not provided sufficient reasons to warrant granting of this order.
10. The issue for determination is whether the application has merit.
11. A grant of letters of administration was issued to the respondent in the estate of the deceased on 07<sup>th</sup> December 2006. He filed summons dated 20<sup>th</sup> November 2007 for confirmation of grant. The same was accompanied by a supporting affidavit in which the following mode of distribution was proposed for parcel number Kagaari/Kanja/1909:
  1. Charles Kinyua Njoka to get 3.79 acres (changed by hand to 3.3 acres)
  2. Patrick Njoka Richard to get 3.79 acres (changed by hand to 3.3 acres)
  3. Edwin Ndwiga Njoka to get 3.79 acres (changed by hand to 3.3 acres)
  4. Beatrice Giciku Nkoka
  5. Odaria Wanja
  6. Elizabeth Wambura
  7. Lucy Marigu to get 1 acre jointly (changed by hand from 2 acres jointly)
  8. Agnes Njoki
  9. Eunice Kaari
  10. Catherine Riimi
  11. Flora Thaara
12. The court allowed the application and issued a certificate of confirmation of grant according to the mode of distribution before the changes made by hand. The certificate of confirmation was issued



on 08<sup>th</sup> January 2009. The applicant filed summons dated 20<sup>th</sup> January 2010 seeking rectification of the certificate of confirmation of grant on the grounds that it does not reflect the changes made by hand to the summons for confirmation of grant, noting that the document had been typed and the handwritten changes were made to it, seemingly with all parties agreeing.

13. The court allowed the application and issued an amended certificate of confirmation of grant on 22<sup>nd</sup> February 2010. The 1<sup>st</sup> applicant first approached this court seeking an order that the order dismissing her application dated 17<sup>th</sup> May 2011 through which she sought revocation of the grant, be set aside and the revocation application be set down for hearing. Through its ruling delivered on 11<sup>th</sup> May 2021, this court dismissed the application. The applicants filed another application seeking revocation of the amended certificate of confirmation dated 22<sup>nd</sup> February 2010. The respondent filed a preliminary objection on the ground that a certificate of confirmation of grant cannot be revoked since it is merely an order which can only be set aside. The preliminary objection was allowed through this court's ruling delivered on 05<sup>th</sup> July 2023. The applicants then filed the application herein, which is up for determination.
14. Through his replying affidavit, the respondent has argued that the applicants have sought review/ setting aside of an order that was made by Hon. D.O. Onyango 16 years ago. It is his argument that the applicants have not provided sufficient reasons for the delay and that the issues raised in the application should be raised through an appeal. The applicants have urged the court to exercise its discretion under Section 47 of the *Law of Succession Act*.
15. Indeed Section 47 of the *Law of Succession Act* and rule 73 of the *Probate and Administration Rules* bestow wide discretionary powers to the court to consider any application and make any orders it considers expedient or necessary in the interest of justice. The respondent has argued that the applicants ought to have moved the Court by way of appeal and not setting aside. The applicants have no issue with the process leading to the confirmation of the grant but have decried the mode of distribution of the estate. It is therefore my view that they are properly before this Court as they are not seeking to revoke the grant but rather to set aside the certificate of Confirmation.
16. The main issue before this court is distribution of the estate which the applicants have termed as unfair. Both the certificate of confirmation and amended certificate of confirmation distributed the property parcel number Kagaari/Kanja/1909 giving the male children of the deceased larger portions than the female children of the deceased. The trial court allowed the 1<sup>st</sup> applicant's application seeking rectification of the certificate of confirmation of grant to include the terms that were handwritten on the proposed mode of distribution and which had not been agreed on by all the beneficiaries.
17. This led to issuance of the amended certificate of confirmation, which the applicants are still unhappy with. In other terms, the applicants were not aware of the rectification and the handwritten changes on the affidavit in support of the summons for confirmation. The distribution discriminates against the daughters of the deceased by the mere fact that they are said to be married. This contravenes Article 27(3) of the *Constitution* which provides thus:

“Women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres”



18. There is no contention as to the list of beneficiaries of the deceased. There is no mention of any widow or widows either. Therefore, the deceased's estate should be subjected to section 38 of the Law of Succession Act which provides thus:

“Where an intestate has left a surviving child or children but no spouse, the net intestate estate shall, subject to the provisions of sections 41 and 42, devolve upon the surviving child, if there be only one, or shall be equally divided among the surviving children.”

This provision, coupled with the above-cited provision of the Constitution clearly guides this court on distribution of the estate herein since daughters and sons have equal rights to the estate.

19. The applicants stated in the application herein that the deceased left other properties which were not included in the summons for confirmation of grant and that the respondent is quietly benefitting from these properties. The respondent did not rebut this position. These properties ought to be added to the estate and distributed alongside the parcel of land that had been distributed before. Since there is no question as to the validity of the grant of letters of administration, the same shall remain in the name of the respondent. As for the applicants' prayer that the matter be heard de novo, there is no proven basis for this.

20. Therefore, having considered the application and the relevant laws, the application partially succeeds with orders as follows:

1. The certificate of confirmation issued on 08<sup>th</sup> January 2009 and the amended certificate of confirmation of grant issued on 22<sup>nd</sup> February 2010 are hereby set aside;
2. A fresh certificate of confirmation to be issued immediately distributing the estate of the deceased as follows:
  1. Parcel number Kagaari/Kanja/1909 to be held by all the 11 beneficiaries of the deceased in equal shares;
  2. Plot no. 187 Runyenjes to be held by all the 11 beneficiaries of the deceased in equal shares; and
  3. Plot number 147 Runyenjes to be held by all the 11 beneficiaries of the deceased in equal shares.

21. It is so ordered.

**DELIVERED, DATED AND SIGNED AT EMBU THIS 24<sup>TH</sup> DAY OF JULY, 2024.**

**L. NJUGUNA**

**JUDGE**

..... for the 1<sup>st</sup> Applicant

..... for the 2<sup>nd</sup> Applicant

..... for the 3<sup>rd</sup> Applicant

..... for the 4<sup>th</sup> Applicant

..... for the 5<sup>th</sup> Applicant

..... for the 6<sup>th</sup> Applicant



..... for the 7<sup>th</sup> Applicant

..... for the 8<sup>th</sup> Applicant

..... for the Respondent

