



**In re Estate of Samwel Kamau (Deceased) (Succession Cause
20 of 1982) [2024] KEHC 8780 (KLR) (23 July 2024) (Judgment)**

Neutral citation: [2024] KEHC 8780 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
SUCCESSION CAUSE 20 OF 1982
SM MOHOCHI, J
JULY 23, 2024**

IN THE MATTER OF THE ESTATE OF SAMWEL KAMAU (DECEASED)

BETWEEN

**MIRIAM NJAMBI KAMAU - DECEASED 1ST ADMINISTRATOR
NIMROD NDIRANGU KAMAU 2ND ADMINISTRATOR
PHILIP NJOROGE KAMAU - DECEASED 3RD ADMINISTRATOR
ALPHAXARD MWAURA KAMAU 4TH ADMINISTRATOR**

AND

**STEPHEN MWANGI KAMAU 1ST BENEFICIARY
ALICE NGUGI KAMAU 2ND BENEFICIARY
JOSHUA KIMANI KAMAU 3RD BENEFICIARY
FLORENCE KAMAU MBIYU 4TH BENEFICIARY**

JUDGMENT

1. Before this Court is a summons for confirmation of grant dated 4th October 2016 filed by the 1st Administrator Miriam Njambi Kamau, the said summons did not contain any mode of distribution proposed.
2. This Court had on the 20th February 2024 directed that the Summons for Confirmation of grant dated 4th October 2016 pending hearing shall be heard and determined concurrently with the Affidavit of Protest dated 6th February 2017 and that the same shall be by way of *viva voce* evidence.
3. The Matter proceeded for hearing on the 30th April 2024 whereby the representatives of the 1st Administrator were absent despite proof of service and the Court accordingly closed the Applicant's



case and invited the Protestor/2nd Administrator who appeared and testified in the absence of the representation from the estate of the deceased 1st Administrator and that after the testimony of the Protestor/2nd Administrator the protestor closed his case.

- Parties were directed to file written submissions and none of them complied.

The Protestor/2nd Administrator' Case

- It was the Protestor/2nd Administrator case that, the Summons for confirmation of grant dated 4th October 2016 is misconceived and does not at all address some pertinent issues pertaining to the estate which he sought to address.
- He adopted his Affidavit of protest dated 6th February 2017 as his evidence-in-chief and proceeded to identify the beneficiaries (without specifying the relationship) to the estate of the deceased as follows.

1. Jason Njenga	2. Alphaxard Mwaura
3. Miriam Njambi-Deceased	4. Eliud Kariuki- Deceased
5. Nimrod Ndirangu	6. Mary Njeri- Deceased
7. Rev. Phillip Njoroge- Deceased	8. Wallace Ngugi
9. Stephen Mwangi	10. Florence Wangui Mbiu
11. Joshua Kimani	

- That, Plot No. 530/162 has had a Court matter in Court since 1981 at the High Court in Nakuru Civil Suit No. 156 of 1981 between *Janet Wangari Kamau vs Philip Njoroge*. (Annexed and marked exhibit 1 is a copy of Court order) and the suit subsequently abated.
- That, the deceased 1st Administrator misled Court in her sworn affidavit by declaring that IR No. 350892 as family plot and that the same does not exist.
- That Plot No. 7172/7 be bequeathed to -Estate of Rev Philip Njoroge Kamau Deceased and -Wallace Ngugi Kamau.
- That, title for Plot No. 7172/7/8 was previously held by KCB Bank in Kisumu Branch over nonpayment of loan but the same has since been discharged.
- That, Plot No. 7172/8, be bequeathed to -Alphaxad Mwaura Kamau and Stephen Mwangi Kamau.
- That, plot No. 7172/9 has had some unresolved issues and was pursuing this matter from A. N. Ngunjiri Advocates Nairobi (Annexed and marked exhibit 4 is a bundle of correspondences
- That, Plot No. 7172/9 be bequeathed to himself as it was gifted prior by the deceased parents and that the title is not in the name of the estate.
- That, Plot No. 530/160, bequeathed to George Kimani Kamau & Estate of Miriam Njambi Kamau - Deceased.
- That, Jason Njenga Kamau was given plot No. 7172/12 by our late parents and asked to pay for the rates and transfer fees.



16. That, Plot No. 12 (industrial) from the beginning belongs to him and does not form part of the estate. the letter of allotment is available to prove the ownership. (Annexed m exhibit 5 is a bundle of documents evidencing ownership) that, the said plot has never been part of the estate.
17. It was the Protestor/2nd Administrator case that, the said plot has a long-standing matter in the High Court in Nakuru that has not been solved being Nakuru HCCA No. 138 of 2006. (Annexed hereto and marked exhibit 6 is a copy memorandum of appeal) That, all Court costs and legal fees for the said plot are met by himself and, all dues for the plot from the County Government are met and borne by himself with no family contributions.
18. That, Elburgon Block 6/4 (Itura) is where their family members are buried and where most of the family members farm. That, he undertakes maintenance, fencing and care of the family buildings at his own cost. That, he has done everything possible to preserve and protect the estate.
19. That, the deceased 1st Administrator has deliberately or otherwise withheld the truth over the estate for her own reasons known to her.
20. That, the deceased 1st Administrator failed in her application to disclose that there are 2 shares of our late parents being held by the family of our late brother's son Jason Njenga Ngugi.
21. That, the parcels of land in Mbiei Mangu Gatundu and one in Kimunye are of Thika - Kiambu a yet to be surrendered by the family.
22. That, two elders who were friends to our parents and were witnesses over the issue are now dead and cannot access the truth.
23. That, one Florence Wambui Mbiya was given a plot in Bahati of Nakuru by our late mother and later sold it.
24. That, he was involved in the Land Control Board meetings over the transfer of the plot of their mother to one Florence Wambui.
25. That, the two have no moral obligation to ask for anything more when the time comes for they have their shares.
26. That, the proposal to share all estate properties comprising the estate equally to all beneficiaries is wholly impractical and cannot amount to distribution of the estate.
27. The Protestor/2nd Administrator prayed that, the grant be confirmed and that the estate of the deceased be distributed in line with his proposed mode of distribution.

Analysis and Determination

28. Owing to the fact that the summons for confirmation of grant by the 1st Administrator was without a proposed mode of distribution and that the 2nd Administrator provided for a proposed mode this Court is persuaded to confirm this grant against the proposal made by the 2nd Administrator.
29. From the foregoing and owing to the fact that, the 1st and 3rd Administrator are since deceased and no attempt was ever made to substitute them. This Court invoking its inherent power's and in the interests of justice hereby rectify the grant dated 16th March 2016 by removing the name of Phillip Njoroge Kamau-Deceased and that Miriam Njambi Kamau as Administrators.
30. A rectified certificate of confirmation of grant shall be issued to Nimrod Ndirangu Kamau and Alphaxad Mwaura Kamau to conclude the distribution.



31. The Assets forming the estate of the deceased subject to distribution exclude all assets the Applicant testified do not form part of the estate.
32. That, upon settlement of all debts due from the estate, this Court orders that, the estate be distributed as follows: -
- a. Plot No. 530/16, bequeathed to -George Kimani Kamau & Estate of Miriam Njambi Kamau- Deceased.
 - b. Plot No. 7172/8, bequeathed to -Alphaxad Mwaura Kamau and -Stephen Mwangi Kamau.
 - c. Plot No. 7172/7 bequeathed to -Estate of Rev Philip Njoroge Kamau Deceased and -Wallace Ngugi Kamau.
 - d. Plot No. 7172/9 bequeathed to -Nimrod Ndirangu Kamau- gifted prior by the deceased parents.
 - e. Plot No. 7172/2 bequeathed to-Eliud Kariuki Kamau.
 - f. Plot No. 7172/12 bequeathed to- Estate of Jason Njenga Kamau Deceased.
 - g. Elburgon/Elburgon block 6/4 Itura;
 - i. 1 acre bequeathed to - Estate of Mary Njeri Kamau- Deceased.
 - ii. 1 acre bequeathed to-Estate of Eliud Kariuki Kamau - Deceased.
 - iii. 1. acre-reserved for homestead.
 - iv. Balance 3 acres to be shared by all.
33. This Court shall not make an order for costs and parties shall bear their own costs.
34. This matter shall be mentioned in six months' time to confirm conclusion of the probate.

It is so Ordered.

DATED, SIGNED AND DELIVERED AT NAKURU ON THIS 23RD DAY OF JULY, 2024.

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MOHOCHI S.M.

JUDGE

