



REPUBLIC OF KENYA



**In re Estate of Ritho Mahira (Deceased) (Succession Cause 320 of 1991)  
[2024] KEHC 15401 (KLR) (Family) (19 September 2024) (Ruling)**

Neutral citation: [2024] KEHC 15401 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
SUCCESSION CAUSE 320 OF 1991  
EKO OGOLA, J  
SEPTEMBER 19, 2024  
IN THE MATTER OF THE ESTATE OF RITHO MAHIRA (DECEASED)**

**BETWEEN**

**ESTHER NYIHA ..... APPLICANT**

**AND**

**THE PUBLIC TRUSTEE ..... 1<sup>ST</sup> RESPONDENT**

**JANE NJUHI RITHO ..... 2<sup>ND</sup> RESPONDENT**

**GEORGE HIRO RITHO ..... 3<sup>RD</sup> RESPONDENT**

**PETER NJENGA RITHO ..... 4<sup>TH</sup> RESPONDENT**

**MARGARET NJUHI RITHO ..... 5<sup>TH</sup> RESPONDENT**

**RULING**

1. The Summons before this court is dated 15<sup>th</sup> November 2019. The applicant prays for the following orders:-
  - a. Spent;
  - b. That this honourable court be pleased to revoke the grant of letters of administration dated 11<sup>th</sup> July 1991 issued to the 1<sup>st</sup> respondent/Public Trustee;
  - c. That the 1<sup>st</sup> respondent/Public Trustee be allowed to file a fresh Petition for the Grant of Letters of Administration for the Estate of the late Ritho Mahira;
  - d. That this honourable court do issue an order installing the Objector/Esther Nyiha as the representative of the 1<sup>st</sup> house;



- e. That this honorable court do issue an order replacing Keziah Njeri (now deceased) with James Mahira as the representative of the 2<sup>nd</sup> house;
  - f. That this honorable court do issue an order replacing Margaret Njuhi Ritho with Margaret Njuhi Ndwaru as the representative of the 4<sup>th</sup> house;
  - g. That this honorable court do issue an order to the 5<sup>th</sup> respondent/George Hiro Ritho to furnish the court and the objector with certified bank statements in relation to the collection of rental income from the deceased estate known as LR Dagoretti/Kangemi/T.449;
  - h. That the rental income from the deceased estate known as LR Dagoretti/Kangemi/T.449 to be collected by the 1<sup>st</sup> respondent/Public Trustee and deposited in Court pending the confirmation of grant;
  - i. Costs of this application be provided for.
2. The Summons were based on the grounds set out therein and the applicant's Supporting Affidavit sworn on even date.
  3. The deceased died intestate in 1972. He was survived by 5 houses. The applicant is a grandchild from the 1<sup>st</sup> house. A grant of letters of administration was issued to the public trustee on 1<sup>st</sup> July 1991. It was then confirmed on 12<sup>th</sup> March 1999 and further rectified on 27<sup>th</sup> March 2012. According to the Certificate of Confirmation of Grant, the deceased estate is comprised of LR Dagoretti/Kangemi/5; LR Dagoretti/ Kangemi/ T.499; LR Dagoretti/Kangemi/T.335; and LR Dagoretti/ Kangemi/ T.57.
  4. LR Dagoretti/Kangemi/5; LR Dagoretti/ Kangemi/ T.499 were allocated to members of the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, and 5<sup>th</sup> house. The members of the 1<sup>st</sup> house were excluded from the estate. LR Dagoretti/Kangemi/ T.335; and LR Dagoretti/ Kangemi/ T.57 was allocated to third parties as per the Ruling of this Court dated 12<sup>th</sup> March 1999.
  5. The applicant's bone of contention is the distribution of LR Dagoretti/Kangemi/5; LR Dagoretti/ Kangemi/ T.499 which the 1<sup>st</sup> house was excluded from during the distribution. The applicant deposed in her Supporting Affidavit that the 1<sup>st</sup> house was not consulted during the distribution of the estate. She further deposed that the 5<sup>th</sup> house has always acted with ill will thereby causing the 1<sup>st</sup> house to be excluded from inheriting from the deceased's estate. The applicant averred that the information issued to the public trustee was that the 1<sup>st</sup> house had no interest in the deceased estate. Therefore, the Certificate of Confirmation of Grant was obtained by making false statements and concealment of material fact.
  6. Furthermore, the applicant contended that the distribution of the estate was as per the African cultural tradition in that married women/daughters were not entitled to benefit from their fathers. The applicant deposed that this was discriminatory to some beneficiaries.
  7. The applicant deposed that the LR Dagoretti/Kangemi/5 was subdivided into excess parcels and in contravention of the Certificate of Confirmation of Grant. Also, she deposed that the public trustee was to collect the rental income from the said property however, the said property was transferred to Sarah Priscilla Wamaitha in 2007. The applicant's apprehension is that if the respondents are not stopped, they will continue misappropriating funds of the estate in a manner that will disinherit members of the 1<sup>st</sup> house and to the benefit of the members of the 5<sup>th</sup> house.
  8. The respondents did not file a response to this application.



## Determination

9. I have considered the application and the entire record of the court.
10. To put matters into context, the mode of distribution as stated in the Certificate of Confirmation of Grant issued to the public trustee was as per this court's Ruling dated 12<sup>th</sup> March 1999. This Ruling culminated from an application dated 23<sup>rd</sup> June 1994 filed by the deceased's 4<sup>th</sup> widow. In the application, she prayed for orders inter alia that Dagoretti/Kangemi/5 be distributed in a manner she had proposed in her application.
11. The deceased 5<sup>th</sup> widow filed an affidavit of protest stating that Dagoretti/Kangemi/T.449, 335, and 341 also formed part of the deceased estate. She proposed her mode of distribution. At the time of the deceased's death, the 1<sup>st</sup> house included two sons; Hoswell Mahira and Danson Gitau. There were four surviving daughters who at that time, had been married. One of the daughters is the applicant's mother.
12. The application was canvassed by way of viva voce evidence. In the Ruling, the court noted as follows:

“The married daughters of the deceased have not made any claim to the estate. None of them has claimed that she needs support from the estate. Members of the five houses do not claim that deceased married daughters should get a share of the estate. Further it is agreed that the deceased gave lands to four of his sons; Hoswell Mahira, Danson Gitau, Fredrick Thiongo, and Dedan Mahira. Each was given four acres in separate lands during the deceased's lifetime.”
13. From that, the court listed the beneficiaries who were yet to inherit from the deceased's estate. It was found that the 1<sup>st</sup> house had no beneficiaries. I reiterate the court's reasoning; the first house had two sons and four daughters. The two sons had already benefited from the estate during the deceased lifetime, and the four daughters who were still alive did not make any claim to the estate.
14. From the foregoing, the court distributed the remaining estate to the beneficiaries of the 2<sup>nd</sup>-5<sup>th</sup> house. The 2<sup>nd</sup> house had one beneficiary. The 3<sup>rd</sup> house had two beneficiaries. The 4<sup>th</sup> house had one beneficiary. The 5<sup>th</sup> house had five beneficiaries. This is the reason that it can be seen that the 5<sup>th</sup> house was allocated more than the other houses.
15. The court went ahead to distribute the estate, and that is what is indicated in the Certificate of Confirmation of Grant. If any surviving child of the deceased was aggrieved with the Ruling of this court, they had an opportunity to file an appeal.
16. The daughters of the first house had an opportunity to appeal the ruling of the court. They did not. There is no reason why the applicant, who is a granddaughter of the first house is aggrieved when the actual beneficiaries did not seem to be aggrieved.
17. The deceased's estate was distributed in 1999, 25 years ago. The parcels of land have been subdivided and sold to third parties. If any of the beneficiaries was of the view that they did not get what was allocated to them by this court, they would have approached this court. This has not happened.
18. Revocation of a grant is dealt with under Section 76 of the [Law of Succession Act](#). The provision states as follows:-

“A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion—



- (a) that the proceedings to obtain the grant were defective in substance;
- (b) that the grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case;
- (c) that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently;
- (d) that the person to whom the grant was made has failed, after due notice and without reasonable cause either—
  - (i) to apply for confirmation of the grant within one year from the date thereof, or such longer period as the court order or allow; or
  - (ii) to proceed diligently with the administration of the estate; or
  - (iii) to produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83 or has produced any such inventory or account which is false in any material particular; or
- (e) that the grant has become useless and inoperative through subsequent circumstances.

19. It is upon any party seeking the revocation or annulment of a grant to demonstrate the existence of some or all of the grounds set out in Section 76 as outlined above. The appellant's contention is that the public trustee has not administered the estate diligently. She contended that LR Dagoretti/Kangemi/5 was subdivided into excess parcels and in contravention of the Certificate of Confirmation of Grant. Also, the public trustee was to collect the rental income from the said property. However, the said property was transferred to Sarah Priscilla Wamaitha in 2007. None of these allegations have been proven. There is no evidence on how Dagoretti/Kangemi/5 was subdivided. Also, none of the beneficiaries of the said land has approached this court to aver that they have not received what the court allocated to them. The Ruling of the Court did not order the public trustee to collect rental income from the said land or any other land belonging to the deceased's estate.

20. The upshot is that the application dated 15<sup>th</sup> November 2019 lacks merit and it is dismissed. There will be no orders as to costs.

Orders accordingly.

**DATED AND DELIVERED AT NAIROBI THIS 19<sup>TH</sup> DAY OF SEPTEMBER 2024**

**E.K. OGOLA**

**JUDGE**

In the presence of:

Mr. Njuguna h/b for Mr. Odeny for the Objector

Ms Gisiele M court Assistant

