



In re Estate of the Late John Karuma Mbiyu (Deceased) (Succession Cause 837 of 2017) [2024] KEHC 14328 (KLR) (Family) (24 October 2024) (Ruling)

Neutral citation: [2024] KEHC 14328 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

FAMILY

SUCCESSION CAUSE 837 OF 2017

HK CHEMITEI, J

OCTOBER 24, 2024

IN THE MATTER OF THE ESTATE OF THE LATE JOHN KARUMA MBIYU (DECEASED)

BETWEEN

BERNICE WANGARI KAIRU 1ST APPLICANT

HOTTENSIAH WANJIRU GATURU 2ND APPLICANT

AND

MARGARET WANJIRU KARUMA RESPONDENT

RULING

1. There are two sets of applications herein. The first application is dated 2September 3, 2019 and the second dated November 10, 2022.The court shall deal with them simultaneously herein.
2. In their application dated September 23, 2019 the Applicants pray for the following orders:-
 - (a) That the grant issued on February 12, 2019 be rectified to include land parcels numbers
 - (I) Plot Number 141 on LR No 209/11388 (Formally Lr No 218/4.
 - (II) Plot Number 142 on LR No 209/11388 (Formally LR No 218/4)
 - (III) Plot Number 143 On LR No 209/11388) Formally LR No 218/4.
 - (b) The same be distributed as provided on the face of the summons.
 - (c) That Irungu Karuma the third administrator be reinstated as the third administrator as per the interim grant of letters of administration issued on 2018 in terms of the petition filed on July 10, 2017.



3. The application is supported by the joint sworn affidavit of the Applicants dated the same day.
4. The application has been opposed by the Respondent herein vide her replying affidavit sworn on August 20, 2021. On a closer perusal of the said replying affidavit however the same only contents on the issue of positioning of plot numbers. The rest of the details and history are not materially different from what the Applicants have stated.
5. It is in agreement that the said parcels belonged to the deceased save that they were not included during the distribution as there was a pending case No. ELC 614 of 1998.
6. The issue of enjoining Irungu Karuma as a third administrator was not in dispute.
7. I have perused the rival affidavits and I find the explanation by the Applicants plausible. In any case since all the beneficiaries belong to the same Estate the position of the plots in my view is not too onerous to warrant much dispute. Neither do I find any prejudice to be suffered by the Respondent or the house she represents.
8. As a matter of fact, the parties may undertake their own “homegrown “arrangements in terms of positioning of themselves. To oust the current status as proposed by the Applicants in my view will bring much confusion noting that they are simply holding the same in trust for the rest of the beneficiaries.
9. In the premises I allow the application and in particular the proposed mode of distribution as described on the face of the chamber summons and supported in the joint affidavit of the Applicants.
10. The second application is dated November 10, 2022 by the Margret Wanjiru Karuma Respondent and Irungu Karuma seeking the following orders:-
 - (a) That the grant herein be amended to include the following properties which were left behind,
 - (i) Plot number 147 and 148 in the names of Mathari United Farmers Limited.
 - (ii) Shares in Kenya Airways.
11. The Applicants swore a joint affidavit in which they indicated that the three assets were left behind when the grant was being confirmed. They then provided a mode of distribution which is on the face of the summons.
12. The said mode shared the two parcels between the two houses and the Kenya Airways shares were to be shared equally.
13. The Applicants have supported the application by the receipts of the two properties as well as the copy of share certificate of Kenya Airways.
14. Hortensia Wanjiru Gaturu the third administrator in her replying affidavit sworn on December 8, 2022 opposed the application on the grounds that the said assets do not belong to the deceased but to other shareholders and if anything, the deceased had disposed them.
15. That the Kenya airways shares for example were since disposed by the deceased and there was therefore nothing to distribute.
16. The Respondent has well blamed the Applicants for not being sincere in making the application and that they have been a great hinderance to bringing to conclusion the issue pertaining to the estate and the same ought to be dismissed.



17. The applicant has countered the above opposition *vide* her further replying affidavit dated 10.3.23 arguing that the fact that there was existence of the certificates was sufficient proof that the same were owned by the deceased.
18. The court has perused the application the annexure thereto and the replying affidavit.
19. This court on perusal of the annexures finds that certificates numbers 882 and 883 for parcels numbers 147 and 148 under plot number 218/4 and dated 31 December 1991 are in the names of John Karuma Mbiyu whom I believe is the deceased herein.
20. The same applies to the Kenya Airways shares under certificate number 09xxx in the name of the deceased.
21. If this is the case then I find the application merited. There is no evidence as suggested by the Respondent that the said assets were disposed since there was no evidence to that effect. Even for argument's sake if the same were not available there is no reason to dismiss the application. At the level of executing the grant the true position will be found out.
22. In the premises I do find the application merited. The sharing or distribution is between the two houses which in any event the Respondent has not opposed.
23. The application dated November 10, 2022 and the mode of distribution proposed allowed as prayed.
24. Costs of both applications herein shall be in the cause.

DATED SIGNED AND DELIVERED VIA VIDEO LINK AT NAIROBI THIS 24TH DAY OF OCTOBER 2024.

H K CHEMITEI

JUDGE

