



**In re Estate of Mugo Muchiri (Deceased) (Succession Cause 83 of 2020 & 10 of 2022 (Consolidated)) [2024] KEHC 13038 (KLR) (18 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 13038 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIAMBU  
SUCCESSION CAUSE 83 OF 2020 & 10 OF 2022 (CONSOLIDATED)  
A MSHILA, J  
OCTOBER 18, 2024  
IN THE MATTER OF THE ESTATE OF MUGO MUCHIRI (DECEASED)**

**BETWEEN**

**PETER KIMANI MUGO ..... APPLICANT**

**AND**

**MUCHIRI MUGO ..... RESPONDENT**

**RULING**

1. Before court is the Summons for Rectification of Grant dated 3<sup>rd</sup> February, 2023 brought under Rule 43 of the *Probate and Administration Rules*. Muchiri Mugo And Peter Kimani Mugo the Administrators of the estate of the deceased herein who died on 11<sup>th</sup> April, 2005, sought for orders:-
  - i. That the Letters of Administration issued on 3<sup>rd</sup> October, 2006, confirmed on the 24<sup>th</sup> November, 2015, amended on 23<sup>rd</sup> September, 2016 and rectified on 11<sup>th</sup> October 2017 in this matter be rectified in the following respects as provided for by Rule 43(1) of the *Probate and Administration Rules*.
    - a. The Property indicated as Komothai/Gathugu/473 for the benefit of Peter Kimani Mugo, Ruth Wanjiru Mugo And Lilian Muthoni Mugo.
    - b. The property indicated as Komothai/Kiratina/217 for the benefit of Ruth Wanjiru Mugo And Lilian Muthoni Mugo.
    - c. The property indicated as Nairobi/block 82/395 Sunrise for the benefit of Muchiri Mugo.
    - d. The property indicated as Kiambu/Githunguri/Kigumo Market Plot No. 16 for the benefit of Ruth Wanjiru Mugo.



- e. Shares in Mwatha & Company for the benefit of the EState of Lydia Wangui Mugo.
  - f. Shares in Huruma Kibichoi Kugeria for the benefit of the Estate of Annah Wamau Mugo.
  - g. Audi KSJ 218 for the benefit of Ruth Wanjiru Mugo.
  - h. Land Rover KRJ 957 for the benefit of Lilian Muthoni Mugo.
2. The application is supported by the affidavit of Peter Kimani Mugo. He deposed that their mother Mary Waithira Mugo died intestate on 17<sup>th</sup> June, 2017 before the assets for her benefit in the estate of Mugo Muchiri (deceased) could be transferred. The beneficiaries of the estate of Mary Waithira held a meeting on 3/6/2018 and agreed on the mode of distribution for the assets of Mary Waithira in the Estate of Mugo Muchiri (deceased) as such the grant rectified on 11/10/2017 ought to be rectified as provided herein above a-h.
  3. Muchiri Mugo filed his replying affidavit dated 6<sup>th</sup> February, 2023. He deposed that the Respondent herein had filed summons for confirmation of grant in Succession Cause No. 83 of 2020 *In the matter of the estate of Mary Waithira* and the court distributed the money in the bank accounts equally amongst all the beneficiaries. The Respondent proposed mode of distribution for the estate of Mary Waithira is as follows:-
    - a. That land parcel Komothai/Gathugu/473 which is an ancestral land and which measures approximately over 9 acres to be distributed as follows;
      - i. Grave yard is where the Respondent's parents and one daughter is buried to be carved out and be registered as a grave yard in the name of Muchiri Mugo and Peter Kimani Mugo and where other children of the deceased shall be buried.
      - ii. The coffee drying area to be surveyed and be shared equally by Muchiri Mugo and Peter Kimani Mugo.
      - iii. The main house where the parents of the Respondent were occupying to be occupied by the deceased's daughters and to be used during family functions "the house is referred as matrimonial home".
      - iv. The house which is opposite the deceased matrimonial home shall be inherited by Peter Kimani Mugo where he currently resides there with his family.
      - v. The factory to be utilized by the children of the deceased who are alive.
      - vi. The coffee stores, one on the left to be for the two daughters of the deceased that is Ruth Wanjiru Mugo And Lilian Muthoni Mugo.
      - vii. The middle store is to be inherited by Peter Kimani Mugo and the right is to be inherited by Muchiri Mugo.
      - viii. The remaining portion of land after the area of grave yard is carved out, the compound of the matrimonial home, the area of the three stores, the area where the house of the deceased and where Peter Kimani resides is carved out to be shared equally between Muchiri Mugo, Ruth Wanjiru Mugo, Lilian Muthoni Mugo And Peter Kimani Mugo.
  4. He further deposed that land parcel Komothai/Gathugu/473 is ancestral land and that Plot No. Nairobi/block/82/395 be registered in the name of Muchiri Mugo as he resides on the said plot. He stated that the Applicant is in possession of the deceased's motor vehicles whereas the Applicant now



proposes that the said motor vehicles be given to Lilian Muthoni and Ruth Wanjiru the daughters of the deceased who reside abroad. He outlines his proposal on distribution as follows;-

- i) Audi KSJ 218 to be in the name of Peter Kimani Mugo
  - ii) Land Rover KRJ 957 to be used by the children of the estate of Annah Wamau Mugo.
  - iii) Kigumo Plot Komothai/Karatina/217 to be inherited by Ruth Wanjiru Mugo and Lilian Muthoni Mugo jointly in equal shares.
  - iv) Plot no. 16 Kigumo to be for the benefit of Ruth Wanjiru Mugo
  - v) Huruma Kibichoi Kugeria Shares to be for the benefit of the estate of Annah Wamau Mugo
  - vi) Mwatha & Company shares to be for the benefit of the estate of Lydia Wangui Mugo.
5. Finally he averred that the family meeting held on 3/6/2018 was for purposes of stock taking and not for distribution and that no consent was signed.
  6. Subsequently, Muchiri Mugo in his further affidavit sworn on 29<sup>th</sup> March, 2023, urged the court to proceed and distribute the estate as the Applicant was said to use delaying tactics as he is the only one benefitting from the estate. The main issue was said to be land parcel Komothai/Gathugu/473 which was said to be ancestral land.
  7. Peter Kimani Mugo filed his supplementary affidavit dated 5<sup>th</sup> April, 2023. He deposed that the beneficiaries of the estate of Mary Waithira in Succession No. 83 of 2020 objected to the mode of distribution in the summons for confirmation of grant dated 23/11/2020 and that they held a meeting on 3/6/2018 and agreed on their mode of distribution. He reiterated his mode of distribution as in his summons for rectification of grant. He denied that Komothai/Gathugu/473 is ancestral land as the same came about by way of amalgamation as Mugo Muchiri (deceased) was given one acre by his father Joseph Muchiri and he later purchased 8 acres. Mary Waithira (deceased) had built a pulping factory on Gatamayu/Nyanduma/1167 for the benefit of Muchiri Mugo who had also been directed to build his home on Gatamayu/Nyanduma/1167, 957 or 485. He averred that their mother was living on LR NO. 82/395 Sunrise from 2005 to 2010 when she moved to Komothai/Gathugu/473. Lilian Mwihaki moved into the premises until 2017 when their mother died and Muchiri Mugo changed the locks and denied her access. Muchiri Mugo moved onto the property with his children and for the sake of peace the family agreed that he keeps the property. Lilian Mwihaki had been bequeathed the said property by Mary Waithira but Muchiri Mugo laid claim to it. The court was urged to adopt the mode of distribution in paragraph 4 of the supporting affidavit for the summons for rectification of grant dated 3/2/2023 and not the Respondent's mode of distribution in paragraph 18 of his Replying Affidavit.
  8. Muchiri Mugo in his further affidavit dated 17<sup>th</sup> April, 2023. He reiterated his averments that land parcel no. Komothai/Gathugu /473 is ancestral as his family members are buried there and that there is no evidence placed by the applicant to show that Mugo Muchiri purchased 8 acres of the said land as such should be distributed as per his proposal. Lilian Mwihaki Mugo was said to be a daughter of Ruth Wanjiru as such not a beneficiary. He deposed that since the death of his father he has been residing on plot no. 82/395 Sunrise. He opposed the mode of distribution filed by the Applicant and urged the court to adopt his mode of distribution
  9. The summons for rectification were heard by way of viva voce evidence.
  10. Peter Kimani Mugo (PW1) stated that he is in court for the benefit of his sisters Ruth and Lilian who reside in America. The only property not agreed upon is Komothai/Gathugu/473. On 3/06/2018



there was a meeting on how to distribute their mother's estate but Muchiri later changed his mind on the agreement. He stated that Lilian and Ruth should get the parcel of land as they have nothing while Muchiri has 24 acres, Lydia Wangui (deceased) has 6 acres, Anne Wamau (deceased) has 4 acres and he has 16 acres from their father's estate. Gatamayu one and half acres was said to have been given to Muchiri as well as a plot in Sunrise the reason why Muchiri is being left out of 473. Eight (8) acres of land parcel no. 473 was said to have been bought from neighbors. With regard to the vehicles the Audi and the Land Rover were said to be given to Ruth and Lilian respectively as Muchiri and Kimani get the pickups.

11. Muchiri Mugo (DW1) stated that land parcel no. 473 is ancestral land as his mother inherited the same from his father and the same should be shared by the four children. The coffee drying area to also be shared equally and the main house should be for their sister's children as they reside there and the same was given to them by his late father. The matrimonial home was said to belong to Peter and Nairobi/block 82/395 belongs to him as given to him by his father. The Land rover was said to have been given to the children of Ann Wamau.
12. At the close of hearing both parties were directed to file and exchange their written submissions.

### **Applicant's Written Submissions**

13. The Applicant submits that parcel no. Komothai/Gathugu/473 is not ancestral land as alleged by the Respondent. It was submitted that the Respondent needed to adduce evidence that the said land is ancestral or was held under a customary trust. The Applicant submits that the land came about after amalgamation as such it is not ancestral and the same was not controverted by the Respondent. He stated that the Respondent had been instructed to build his home on Gatamayu/Nyanduma/1167, 957 or 485. Mary Waithira (deceased) was said to have been residing on LR No. 82/395 Sunrise from 2005 until 2010 when she moved to Komothai/Gathugu/473 and left Lilian Mwhaki living on the premises but in 2017 the Respondent claimed LR No. 82/395 Sunrise by changing the locks and denied Lilian Mwhaki access. The Respondent was said to be inconsiderate of the wishes of the other beneficiaries as such the court was urged to rectify the letters of administration as in the application dated 3/2/2023.

### **Respondent's Written Submissions**

14. The Respondent submits that land parcel Komothai/Gathugu/473 inherited by Mary Waithira (deceased) from Mugo Muchiri (deceased) is ancestral as the same was inherited from his grandfather. There exists a grave yard on the said land where family members are buried as well as a matrimonial home, coffee factory, coffee drying bed, three coffee stores, coffee trees and other crops. He submitted that the 9.3 acres should be shared equally among the surviving children of the deceased being Ruth Wanjiru, Muchiri Mugo, Lilian Muthoni, Peter Kimani each to get 2 acres. The remaining 1.3 acres was said to comprise of matrimonial house, grave yard, coffee drying beds, coffee factory, 3 coffee stores and the main gate to the coffee factory which was said to remain open to be used by the children of the deceased and the grandchildren. He stated that the matrimonial house should be occupied by the children of his deceased's sisters Annah Wamau and Lydia Wangui. He proposed that the compound be divided into two equal shares being A and B. That A should be registered in the name of Peter Kimani to hold in trust for himself and Ruth Wanjiru and Lilian Muthoni in equal shares and B to be registered in the name of Muchiri Mugo to hold in trust for himself and the estate of Ann Wamau and Lydia Wangui in equal shares. The coffee factory was said to be used by all and the coffee drying bed to be divided into two for use by Muchiri Mugo and Peter Kimani. The three stores were said to be shared by Muchiri Mugo to use the one on the left, Peter Kimani the one on the right and the middle one to be used by Ruth Wanjiru and Lilian Muthoni equally. He submitted that he is entitled to use



the drying bed on land parcel no. Komothai/Gathugu/473 as there is none on his land Gatamaiyu/Nyanduma/1167. He submitted that the vehicles be the asset of Peter Kimani as he is the one in use and Plot no. Nairobi/block 82/395 Sunrise be in his name as he has been in its use, the same having been accepted by Peter Kimani. Lastly in regard to Gatamaiyu/Nyanduma/1862, the same to be conferred to the children of Annah Wamau and Lydia Wangui equally.

### **Issues For Determination**

15. Having considered the application and the written submissions the issues framed for determination are;
  - (i) Whether the land known as Komothai/Gathugu/473 is ancestral land;
  - (ii) Distribution of the assets of the estate of Mary in particular Komothai/Gathugu/473 and Nairobi/block 82/395 Sunrise;

### **Analysis**

#### **Whether the land known as Komothai/Gathugu/473 is ancestral land;**

16. The main issue before this court is whether the land in issue is ancestral land;
17. On the part of the Respondent his claim was that Komothai/Gathugu/473 the disputed land was ancestral land. The Applicant argued that their deceased father was given one (1) acre of the disputed land by their grandfather and that their father purchased an additional eight (8) acres from the neighbours which he amalgamated with the one (1) acre and obtained title to the property and therefore the land was not ancestral land;
18. It is trite law that the burden of proving a fact is on the one who alleges; the first issue that the Respondent ought to have raised was before the Grant was issued and confirmed was that the disputed land was ancestral land and he ought to have filed an objection on the probates courts jurisdiction and requested the court to stay proceedings pending determination by ELC court on the issue as to whether the land held by their late father was ancestral land being held by their father in trust for his brothers or his sons;
19. The Respondent failed to provide sufficient evidence, to enable this Court to conclude that the disputed land was ancestral land. Most importantly, according to the Land Register, the Certificate of Title to the disputed land was issued on 5/08/1958 and was exclusively held by their deceased father meaning that he could deal with the property as he wished, pursuant to the right guaranteed by Section 24 (a) of the [Land Registration Act](#) 2012. Therefore their deceased father held the land exclusively and was his free property, and this court is satisfied that Komothai/Gathugu/473 is not subject to any trust or ancestral rights.

#### **Distribution of the assets of the estate of Mary in particular Komothai/Gathugu/473 and Nairobi/block 82/395 Sunrise**

20. It is not in dispute that a meeting was held on 3/6/2018 but it is apparent from the submissions that there was no consensus or agreement reached as to the mode of distribution of their mothers estate;



21. The applicable law is found at Section 38 of the *Law of Succession Act* which provides as follows;
- “Where an intestate has left a surviving child or children but no spouse, the net intestate estate shall, subject to the provisions of Section 41 and 42, devolve upon the surviving child, if there be only one, or shall be equally divided among the surviving children.”
22. In the case of *Stephen Gitonga M’Murithi v Faith Ngira Murithi* [2015] eKLR where the Court of Appeal noted that: Cap 160 of Laws of Kenya, Section 38 of the *Law of Succession Act* enshrines the principle of equal distribution of the net intestate estate to the surviving children of the deceased irrespective of gender and whether married or not;
23. Article 27 of the 2010 *Constitution* provides for equality and freedom from discrimination and consequently and this court is satisfied that all the children of the deceased are entitled to inherit equal shares of their mother’s estate. The mode of distribution shall be in accordance with Section 38 of the *Law of Succession Act*; and the children of the deceased daughters that is the children of Hannah (deceased) and Lydia (deceased) shall be included; The children of the deceased daughters are directed to obtain their respective parents estate.
24. The law that also guides this court is found under the provisions of Rule 73 of the *Probate and Administration Rules* which reads as follows;
- “Nothing in these Rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.”
25. This Court is therefore vested with inherent powers to make such orders as may be necessary to meet the ends of justice; From the material placed before this court there are two (2) contentious properties that is Komothai/Gathugu/473 and Nairobi/block 82/395 Sunrise; for there to equality in the mode of distribution this court directs that a Valuation over the two (2) properties be conducted by a Valuer to be agreed upon by the parties and expenses be shared;

### **Findings and Determination**

26. For the forgoing reasons this court makes the following findings and determinations;
- (i) This court finds that Komothai/Gathugu/473 is not ancestral land and it is free property and available for distribution;
  - (ii) Distribution of the property of Mary Waithera (deceased) shall be in equal shares in accordance with Section 38 of the *Law of Succession Act*;
  - (iii) The children of Hannah (deceased) and Lydia (deceased) be and hereby included; the children are directed to obtain a Grant of Letters of Administration to their respective parents estates.
  - (iv) Valuation of Komothai/Gathugu/473 and Nairobi/block 82/395 Sunrise to be conducted within forty-five (45) days; Valuer to be agreed upon by parties; Expenses be shared;
  - (v) Final Rectification Orders to await Valuation.
  - (vi) Mention on 16/12/2024 before the Deputy Registrar for compliance on Valuation and Legal Representation.

Orders Accordingly.



**DATED SIGNED AND DELIVERED VIA TEAMS AT KIAMBU THIS 18<sup>TH</sup> DAY OF OCTOBER, 2024**

**A. MSHILA**

**JUDGE**

In the presence of;

Mourice – Court Assistant

Kibera – for Peter Mugo

Muchiri Mugo – present in person

