



REPUBLIC OF KENYA



In re Estate of the Late Gathii Mwate (Deceased) (Succession Cause 151 of 2007) [2024] KEHC 12134 (KLR) (11 October 2024) (Ruling)

Neutral citation: [2024] KEHC 12134 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE 151 OF 2007
RN NYAKUNDI, J
OCTOBER 11, 2024**

IN THE MATTER OF THE ESTATE OF THE LATE GATHII MWATE (DECEASED)

IN THE MATTER OF

**JOHNES MWANGI GATHII 1ST PETITIONER
JOSEPH HINGA GATHI 2ND PETITIONER
JAMES WAINAINA MWANGI 3RD PETITIONER
PETER NJOROGE MWANGI 4TH PETITIONER**

RULING

1. The late Gathii Mwate died on 21st February, 2002. The 1st Petitioner moved this court on 16th May, 2007 with a petition for letters of administration intestate. A grant was made to the 1st petitioner and a certificate of confirmation of grant issued on 15th June, 2009. Before the estate was distributed accordingly, the Petitioner's mother and sister died. The 1st petitioner being the administrator filed summons for amendment of amendment of the confirmed grant where he sought reliefs as follows:
 - a. That the certificate of confirmation of grant issued by this honourable court on 15th June, 2009 be amended as follows:
 - i. Landa parcel No. Gochororo plot No. 171 be shared between Joseph Hinga, James Wainaina, Peter Njoroge, Samuel Kamau, Mary Wairimu Kabuga and Johnes Mwangi Gathi.
 - ii. Land Parcel No. Gachororo plot No. 40 be given to Johnes Mwangi Gathi absolutely.
2. Aggrieved by the proposed amendment, the 4th Petitioner filed an application dated 7th April, 2017 wherein he stated that the 1st petitioner/administrator of the estate gave himself shares in Gachororo Farmers Limited No. 215 leaving out all the other beneficiaries. That the administrator/1st petitioner



also gave himself Kiganjo/Handage plot T/96 and Kiganjo/Handege/669. The grant was later on revoked by Omondi J. on 4th May, 2020.

3. On 21st April, 2021, the 1st Petitioner made an application by way of chamber summons for issuance of fresh grant of letters of administration after this court revoked a grant on 4th May, 2020 made to Johnes Mwangi Gathii. A fresh grant was subsequently issued by this court on 22nd March, 2022 to Johnes Mwangi Gathi, Joseph Hinga Gathii, James Wainaina Mwangi and Peter Njoroge Mwangi. Soon thereafter, the 1st, 2nd and 3rd Petitioners approached the court with summons for confirmation of the said grant. The summons were opposed by the 4th Petitioner who did not agree with the proposed mode of distribution.
4. The 4th Petitioner maintained that Property known as Market Lockup No. 215 belongs to him and thus does not form part of the estate. Further that the parcel of land known as Kahawani Plot 683 belongs to him and that he has a title deed to that effect. He contended that the deceased had 7 acres of land in Kuresoi in parcel of land known as Mwarangania Farmers society but the same were sold by the 1st Petitioner.
5. The 4th Petitioner maintained that the parcels of land known as Juja Kiaura Plot 171 and 210 were given to him in 1997 by the deceased and that he has been in possession and occupation of the two parcels to date. The 4th Petitioner further deposed that the title deeds to the said parcels however are still in the deceased's name. He averred that he is in possession of the said titles.
6. According to the 4th Petitioner, he is not willing to take parcel of land known as Kiganjo/Handege Plot T/96 and proposed that the same be given to his other siblings and that he should be given Juja Kiaura Plot 17. He proposed a mode of distribution and after the court considered the application together with the objection, issued directions as follows:
 - a. The summons for confirmation of grant dated 27th June, 2022 and filed in court on 30th June, 2022, be and is hereby dismissed.
 - b. Parties to tender viva voce evidence on the mode of distribution of the estate of the deceased.
 - c. Each party shall bear its own costs noting that the claim herein is a succession cause involving members of one family.
7. The Petitioners later through an application dated 27th May, 2024 opted to have the estate distributed based on the evidence and material on record. On that basis, this court shall nonetheless proceed to distribute the estate in all fairness.
8. From the material on record, the following have been identified as the assets forming part of the estate of the deceased:
 - a. Kapsaret/Kapsaret Block 1 (Yamumbi) No. 367 – measuring 4 acres
 - b. Juja Kiaura Plot 210 – measuring 0.0585 HA,
 - c. Kiganjo/Handege Plot T/96
 - d. Market Lockup No. 215
 - e. Kiganjo/Handege Plot No. 669
 - f. Juja Kiaura Plot 171 – measuring 0.8811
 - g. Kahawani Plot 643 – measuring ½ an acre



- h. Share No. 215 at Gachororo Farmers Limited
9. The deceased died intestate and left the following:
- a. Johnnes Mwangi Gathii – son
 - b. Joseph Hinga Gathi – son
 - c. James Wainaina Mwangi – (deceased)
 - d. Samuel Kamau Mwangi – son
 - e. Mary Wairimu Kabuga – son
 - f. Peter Njoroge Mwangi – son
10. The 1st, 2nd and 3rd Petitioners proposed that the said assets should be distributed in the following manner:
- Kapsaret/Kapsaret Block 1 (Yamumbi) No. 367 – measuring 4 acres – Whole portion to be given to Samuel Kamau Mwangi
- Juja Kiaura Plot 210 – measuring 0.0585 HA – whole portion to be given to Peter Njoroge Mwangi
- Kiganjo/Handege Plot T/96 – Whole portion to be given to Peter Njoroge Mwangi
- Market Lockup No. 215 – to be given to Peter Njoroge Mwangi
- Kiganjo/Handege Plot No. 669 – Peter Gitua Muhia – purchaser
- Juja Kiaura Plot 171 – measuring 0.8811 – whole portion to be shared equally between Johnnes Mwangi Gathii, Joseph Hinga Gathi, James Wainaina Mwangi and Mary Wairimu Kabuga
- Kahawani Plot 643 – measuring ½ an acre – whole portion to be shared equally between Johnnes Mwangi Gathii, Joseph Hinga Gathi and James Wainaina Mwangi
- Share No. 215 at Gachororo Farmers Limited – to remain in the name of Johnnes Mwangi Gathi in trust for the beneficiaries of the estate of the deceased.
11. The 4th Petitioner on the other hand proposed as follows regarding the distribution of the deceased's estate:
- a. Juja Kiaura Plot 171 – measuring 0.8811 – Whole portion to Peter Njoroge Mwangi
 - b. Juja Kiaura Plot 210 – measuring 0.0585 HA – Whole portion to Peter Njoroge Mwangi
 - c. Kiganjo/Handege Plot T/96 – to be shared amongst the siblings
 - d. Share No. 215 at Gachororo Farmers Limited – to be shared amongst all the beneficiaries of the estate.
12. The 1st, 2nd and 3rd Petitioners in supporting their model of distribution argued that the same has incorporated all the assets forming part of the estate of the deceased and the one that was sold being; Kiganjo/Handege Plot No. 669 unlike the 4th Petitioner's model of distribution.

Resolution

13. As a matter of reflection and retrospection, it is puzzling that an estate whose net value has described by the administrator in an affidavit of justification dated 16th May, 2007 with a net worth of Kshs. 500,000/= could remain unlocked within our legal system for years without any of the beneficiaries



having access to its usage. The record also tells a story that the beneficiaries have been litigating and re-litigating on the same subject matter since 22nd June, 2009 when P.M. Mwilu J (as she then was) now a Deputy Chief Justice of the Republic of Kenya did issue a final decree in the form of a Certificate of Confirmation of Grant in favour of the estate. The aforesaid Certificate of confirmation of Grant sets out clearly the beneficiaries and corresponding identified intestate estate with a sharing formula within the letter and spirit of Section 38 of the *Law of Succession Act*. Thereafter, a series of applications were generated on preservation, revocation and none of it was on transmission and conveyance of the specifications in the Certificate of Confirmation of Grant issued by P.M. Mwilu J. as she then was. This court alone has pronounced itself more than once on matters arising on this same estate. As I delve into this matter on distribution once again, I find no defects in the Certificate of confirmation of Grant issued by the then session judge P.M. Mwilu J as she then was and even the subsequent proposals are just but parties looking at the same coin using different legal lens. This is a case where one cannot rule out negligence and lack of due diligence on the part of administrators who always on oath swear that they would faithfully administer the estate diligently and lawfully for the benefit of the heirs

14. At the time of filing this petition, the deceased's wife had passed on leaving behind only the children. The applicable law is therefore Part V of the *Law of Succession Act*, which provide that where an intestate is survived only by children and no spouse, the property is shared out equally amongst the children.
15. Section 38 states 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 sections 41 and 42, devolve upon the surviving child, if there be only one, or shall be equally divided among the surviving children.”
16. I also have to give allowance of the fact that the beneficiaries herein might have developed some parcels as can be seen from the proposed modes of distribution; some of the properties as evidenced from the said proposals have been allocated to individual beneficiaries so as to ensure their shares fall in the parcels of land where they have developed.
17. I take note of the fact that the beneficiaries herein have developed parcels shown to them; there is need to take into account developments done by individual beneficiaries and ensure their shares fall in the parcels of land where they have developed.
18. Having said that and having considered the averments in the affidavit evidence and in conformity with the provisions of section 38, I am of the considered view that the proposal by the 1st, 2nd and 3rd Petitioners is fair and equitable save for Share No. 215 At Gachororo Farmers Limited which shall be shared equally amongst all the beneficiaries. The estate shall be distributed as follows:



No	Property	Share	Beneficiary
1.	Kapsaret/kapsaret Block 1 (yamumbi) No. 367 – Measuring 4 Acres	Whole	Samuel Kamau Mwangi
2.	Juja Kiaura Plot 210 – Measuring 0.0585 Ha	Whole	Peter Njoroge Mwangi
3.	Kiganjo/handege Plot T/96	Whole	Peter Njoroge Mwangi
4.	Market Lockup No. 215	Whole	Peter Njoroge Mwangi
5.	Kiganjo/handege Plot No. 669	Whole	Peter Gitua Muhia
6.	Juja Kiaura Plot 171 – Measuring 0.8811	Equally	Johnnes Mwangi Gathii Joseph Hinga Gathi James Wainaina Mwangi Mary Wairimu Kabuga
7.	Kahawani Plot 643 – Measuring ½ An Acre	Equally	Johnnes Mwangi Gathii Joseph Hinga Gathi James Wainaina Mwangi Mary Wairimu Kabuga
8.	Share No. 215 At Gachororo Farmers Lintied	EqualLy	Amongst all beneficiaries

19. It should be noted that properties devolved unto beneficiaries of the estate become part of the properties of the beneficiaries after they have been first vested in them by a valid registered vesting instrument by the Land Registrar in case of immovable estate. The import of the judgment in this case is this; when a person dies intestate or testate, his estate falls on the executor or personal representative respectively to ascent to the necessary instruments to then distribute any portion of the estate as identified in the Certificate of Confirmation of Grant. From the submissions of learned counsel Mr.



Kagunza, it is my considered view that the doctrine of equity and equality infused together goes to show that by virtue of Section 38 of the Act, the appropriation of the category of shares in respect of this estate cannot be faulted. In what has been deemed by this court as an estate which has been in limbo for decades, it is my hope that the administrators and beneficiaries would take an immediate interest in the property and for that reason have it distributed as the obtained Certificate of Confirmation of Gran indicates elsewhere in this ruling. The position taken by this court to me is a compromised scale on distribution to the previous judgments. The costs of the confirmation proceedings shall be in the cause

DATED AND SIGNED AT ELDORET ON THIS 11TH DAY OF OCTOBER 2024

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R. NYAKUNDI

JUDGE

Email: skagunza@gmail.com

In the presence of:

Mr. Kagunza, Advocate for the 1st – 3rd Petitioners.

