



In re Estate of Arnest Njoroge Kiarie alias Ernest Mukuha Kiarie (Deceased) (Succession Cause 490 of 1995) [2024] KEHC 11661 (KLR) (Family) (3 October 2024) (Ruling)

Neutral citation: [2024] KEHC 11661 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 490 OF 1995
HK CHEMITEI, J
OCTOBER 3, 2024**

**IN THE MATTER OF THE ESTATE OF THE LATE ARNEST
NJOROGE KIARIE ALIAS ERNEST MUKUHA KIARIE (DECEASED)**

BETWEEN

DAVID KANYORO NJOROGE 1ST APPLICANT

FRANCIS NJOROGE 2ND APPLICANT

AND

SAMUEL KABI NJOROGE RESPONDENT

RULING

1. In their application dated 9th August 2021 the Applicants pray for the following orders:-
 - (a) That the certificate of confirmation of grant of letters of administration issued to David Kanyoro Njoroge and Francis Njoroge in this matter on 7th June 2010 be amended or otherwise rectified in the following respects as provided by Rules 43(1), 46 and 49 of the Probate and Administration rules and underlined in red;



Name	Description of Property	Share of Heirs
Zipporah Waithera	Dagoretti/Kangemi/783 Dagoretti/Kangemi/1928	Whole
David Kanyoro Njoroge	Dagoretti/Kangemi/783 Dagoretti/Kangemi/1926 Dagoretti/Kangemi/1927 Dagoretti/Kangemi/1930	Whole Whole Whole
Samuel Kabi Njoroge	Dagoretti/Kangemi/783 Dagoretti/Kangemi/1925	Whole
Simon Manjari	Dagoretti/Kangemi/783 Dagoretti/Kangemi/1929	Whole
Dagoretti/Riruta/1196 to be subdivided into 5 portions as follows:		
Samuel Kabi Njoroge	Dagoretti/Kangemi/4166	Whole
Rahab Wanjiku Njoroge	Dagoretti/Kangemi/4167	Whole
Francis Njoroge	Dagoretti/Kangemi/4168	Whole
David Kanyoro Njoroge	Dagoretti/Kangemi/4169	Whole
Samuel Kabi Njoroge	Dagoretti/Kangemi/4170	Whole

- (b) That a declaration does issue that Samuel Kabi Njoroge the former administrator of this estate has intermeddled in this estate by causing land reference number Dagoretti/Kangemi/783 to be subdivided and the subdivisions therefrom be registered in his names instead of the names of the beneficiaries of the said land as per the grant confirmed herein.
- (c) That the prescribed penal consequences for intermeddling with the estate do issue against Samuel Kabi Njoroge forthwith for intermeddling with land reference number Dagoretti/Kangemi/783 which belonged to the estate.
- (d) That a declaration does issue that Samuel Kabi Njoroge the former administrator of this estate is holding in trust the following titles for the beneficiaries of this estate:-
- (i) Dagoretti/Kangemi/1925 for himself.
 - (ii) Dagoretti/Kangemi/1926 for David Kanyoro Njoroge
 - (iii) Dagoretti/Kangemi/1927 for David Kanyoro Njoroge
 - (iv) Dagoretti/Kangemi/1928 for Zipporah Waithera
 - (v) Dagoretti/Kangemi/1929 for Simon Manjari
 - (vi) Dagoretti/Kangemi/1930 for David Kanyoro Njoroge.



- (e) That a mandatory order does issue directing Samuel Kabi Njoroge to immediately cause the transfer of the above subdivided titles in favour of the beneficiaries of the estate in terms of the grant rectified or amended as per paragraph (a) hereof.
2. The Applicants prayed for the costs of the application.
 3. The application is based on the joint affidavit sworn by the Applicants dated the same date.
 4. The application is opposed by the Respondent vide his replying affidavit sworn on 9th December 2021.
 5. The court directed the parties to file written submissions and at the time of writing this ruling it was only the Applicant who had complied.
 6. The issues herein bedevilling the parties are not difficult to understand and they are worth explaining before looking at the merit or otherwise of the application.
 7. In the first instance all the parties are deceased's children. The Respondent filed this cause and the grant issued to him was confirmed on 3rd March 1998. The grant directed that the contentious parcel of land namely Dagoretti/Kangemi/783 be divided into five portions as follows.
 - (a) Zipporah Waithera Njoroge one plot.
 - (b) Samuel Kabi Njoroge one plot
 - (c) David Kanyoro Njoroge three plots
 - (d) Simon Manjari Njoroge one plot.
 8. The other property namely Dagoretti/Riruta /1196 was divided into five portions as well and each one of them got their respective title. This parcel has no issues.
 9. The Applicant did apply for setting aside the grant issued to the Respondent and on 28th May 2008 the court revoked the said grant and issued a fresh one to the Applicants. They were also directed to apply for a fresh grant and the same was confirmed on 9th June 2010.
 10. I have looked at the said grant dated 7th June 2010 and in regard to the property in question, Dagoretti/Kangemi/783 the division is similar to the earlier grant dated 3rd March 1998 word for word save that the administrators were now the two Applicants above. The said parcel was divided into six portions with each one of them getting one portion and David Kanyoro getting three.
 11. It was argued by the Respondent that the grant in his favour was revoked in his absence and that is why he took the matter to the police as well as the document examiner who found that his signature had been forged. He claimed that he was still the administrator of the estate and thus the application to amend the grant ought to be disallowed.
 12. He further challenged the Applicants to demonstrate by way of evidence how the said parcel of land had been subdivided since they had not produced any evidence. He deponed that the application ought to be dismissed.

Analysis and determination

13. The court has perused the proceedings, as well as the submissions herein by the Applicant.
14. What I find for a fact is that although the grant was revoked and a new one issued in favour of the Applicants, land parcel number Dagoretti/Kangemi /783 was to be shared out in the manner and style



proposed in the revoked grant. In other words, despite losing his right as a sole administrator of the estate his mode of distribution was adopted by the new administrators.

15. That being the case therefore I do not find any prejudice suffered by the Respondent despite losing his position to his two siblings. On the other hand, the two administrators save for the powers they acquired as administrators did not alter much.
16. I have looked at the record and the affidavits in response and I agree with the Respondent that there was no evidence that the contentious parcel had been subdivided and registered in his names. If there was any iota of evidence, then the court would have thought otherwise.
17. In my view, this long and winded matter ought to come to an end. The parties have complicated matters for themselves yet they are speaking one and the same language, namely, that land parcel Dagoretti/Kangemi /783 ought to be divided into six portions. Already they are enjoying the usage. The only remaining issue is to transmit the same in their favour by way of registration.
18. In view of the fact that the law allows not more than four administrators in an estate I find that in order to bring into conclusion this matter and so as to assuage the Respondent from pursuing his objection and therefore delaying this matter the court finds it necessary on its own motion to make him a third administrator. This direction is meant to ensure that the three shall finalised the administration of the estate as in any case they all have equal rights to the extent that they are deceased children.
19. At the same time I do not find any reason why the application to amend the grant as proposed under (a) above especially the schedule is concerned should be denied. If the parcel of land has been subdivided in the manner described by the Applicants, then the amendment shall work in favour of all of them.
20. In the event that the subdivision has not been undertaken the three now administrators shall be at liberty to carry out the subdivision as per the said grant so that each of them shall have their respective portions and titles in their names.
21. In the same vein, if what the Applicants are stating that the resultant titles of Dagoretti/Kangemi/783 is true, that is, that they are in the names of the Respondent, although the court has not been persuaded by any evidence, then, the said titles ought to be cancelled forthwith and the same to revert to the name of the deceased and thereafter to the names of the three joint administrators who shall proceed to carry out a proper subdivision as per the grant.
22. I think the court has stated so much to show that essentially what the parties are fighting over is a non-issue for the reason that they eventually agree that the contentious parcel be subdivided into six portions as per the grant whether the revoked one or the new grant.
23. In the premises the court directs that:-
 - (a) The grant issued on 7th June 2010 is hereby amended or rectified so as to include Samuel Kabi Njoroge as a joint administrator with David Kanyoro Njoroge and Francis Njoroge.
 - (b) Without prejudice to any subdivision and registration which may have been carried out by the Applicant on land parcel number Dagoretti/Kangemi/783, any resultant titles in his name shall be cancelled and the said parcel shall revert to the deceased name and thereafter the three joint administrators shall carry out an agreed subdivision into six portions as per the grant issued on 7th June 2010.
 - (c) Costs shall be in the cause.

DATED SIGNED AND DELIVERED AT NAIROBI ONLINE ON 3RD DAY OF OCTOBER, 2024.



H K CHEMITEI
JUDGE

