



REPUBLIC OF KENYA



**In re Estate of Amos Chege Kangethe (Deceased) (Succession Cause  
345 of 2006) [2023] KEHC 525 (KLR) (2 February 2023) (Ruling)**

Neutral citation: [2023] KEHC 525 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
SUCCESSION CAUSE 345 OF 2006  
TM MATHEKA, J  
FEBRUARY 2, 2023**

**BETWEEN**

**DAVID KARUNGU CHEGE ..... APPLICANT**

**AND**

**ESTHER NJERU CHEGE ..... RESPONDENT**

**RULING**

1. Amos Chege Ng'ethe died on January 27, 1984. He was survived by his wife Esther Njeri Chege, Children John Ngethe, Mary Wanjiru, Daniel Karungu, Elizabeth Ng'endo and Patrick Kimani.
2. Grant of letters of administration of estate intestate was made on October 17, 1984 to Esther Njeri Chege.
3. The deceased had the following assets;
  - a. Plot no 2087/I, Kongoea, Mombasa
  - b. Plot no 2012, Kisauni, Mombasa
  - c. Plot no 2243, Shanzu, Mombasa
  - d. Plot no 119, Nakuru Town
  - e. Plot no 455/188, Nakuru Town
  - f. Plot no 117D, Roysambu, Nairobi
  - g. Plot no A/189, Roysambu, Nairobi
  - h. Motor vehicle registration Number KDQ 965
    - i. Itherero Farmers Co. Ltd.



- j. Mangu Enterprises Ltd.
4. A certificate of confirmation of grant dated July 22, 1986 was issued to Esther Njeri Chege;  
“Pursuant to section 71(1) and (3) of the *Law of Succession Act*.”
  5. I have not seen the schedule of distribution but since then the administrator, and her 1<sup>st</sup> born Daniel Karungu Chege have been embroiled in the distribution of the estate.
  6. The current application is the one dated December 16, 2022 where Daniel seeks that his mother, be ordered to produce to court a full and accurate inventory of the estate, laying out its assets and liabilities, as required by section 83(e) of the Law of Succession.
  7. In addition the son seeks that the court to declare null and void any sale of any of the assets of the estate made by the administration without the consent of the beneficiaries of the estate.
  8. The application is supported by the grounds of the face of the application and the supporting affidavit of Daniel Karungu Chege sworn on December 16, 2021. His main compliance against his mother is that she was appointed administrator in 1984, and since then had disposed of properties without consent of the beneficiaries or leave of court.
  9. That the mother had not filed any account with respect to the estate since she obtained grant of letters of administration, yet she has been receiving rental income for the estate.
  10. In response to the application Esther swore an affidavit on April 1, 2022. She depones that she initiated the succession cause, obtained grant of letters of administration intestate and pursued the cause to conclusion together with her son, John Ngethe Chege (now deceased) after she was issued with certificate of confirmation of grant.
  11. That at the end of the process she transmitted all her husband’s property to her name, which, according to advise from her counsel, concluded the matter, that there is property in the name of the deceased.
  12. Further that among her children the applicant was the one terrorizing her demanding rent from her properties yet it is the sole source of her income.
  13. Further that having concluded her obligations as an administrator, and being the current owner of the said properties, there is nothing to account for, and that the court had been rendered functus officio.
  14. In his rejoinder Daniel filed a further affidavit on April 14, 2022 where deponed that his mother held the properties in trust for the rest of the beneficiaries, that he personally was never consulted, and never gave consent for the disposal of any asset of the estate. he pointed out that his mother had filed in court, a schedule of assets of the estate on February 13, 2017 with a proposed mode of distribution, and in another affidavit sworn on October 30, 2019, she had also listed the properties and the manner of inheritance; that she had also admitted to selling off some of the assets, yet she was denying their existence.
  15. Esther filed a further replying affidavit where she deponed that when her husband died her children were very young, and she had no source of income. That she sold the plot in Kisauni to cater for her and their needs, that she did so when her son and co-administrator John was alive, that all the other properties were intact, that the applicant was a nuisance and the Affidavits he had referred to had been found by the court to be improper. That due to the applicant’s conduct she was now contemplating distributing the estate to the children.
  16. Parties agreed to dispose of the application by way of written submissions.



17. The applicant's were filed on May 18, 2022.
18. The respondent filed hers on June 20, 2022.
19. The only issue for determination is whether the administrator who is the widow can claim absolute ownership of the estate upon transmission to her and whether she has no obligation upon such transmission to account for the estate as required of any other administrator.
20. The spouse of the deceased person occupies a special space in the administration of the estate of that person. The spouse gets the priority right under section 66 to be appointed the legal representative of the deceased spouse. This, I am certain is in recognition of the special position a spouse hold in the acquisition of the property that may form the estate of the deceased.
21. When it come to the distribution of the intestate estate the spouse, under section 36 gets the 1<sup>st</sup> right to the personal and household effects of the deceased, absolutely, 20% out of the residue of the net in estate and a life interest in the whole of the remainder.
22. The rights of the spouse during life interest are set out under section 37 "that with the consent of co-trustees, and all the children of full age or with the consent of the court may, sell any of the property subject to the interest of necessary for his/her own maintenance."
23. The words of Mativo J ( as he then was ) *In re Estate of Doris Wanjiku John Mwigaruri alias Doris Wanjiku* light up this provision. He says; -
 

"Life interest confers a limited right to the surviving spouse over the state. He or she does not enjoy absolute ownership over the property. They cannot deal with it as if it was their own. By virtue of section 37 of the act, a surviving spouse cannot during life interests dispose of any property subject to that life interest without the consent of all the adult children, co-trustees and the court. This is meant to safeguard the interest of the children who are the ultimate beneficiaries of the property of the subject of the life interest. It is in this respect that the life interest operates as a trust over the property the subject thereof, a trust held by the surviving spouse for the benefit of the surviving children."
24. This recognizes that there could be continuing trusts, hence the requirement for co trustees; that the children of full age could refuse to cooperate at a time the spouse enjoying the life interest could be in need hence the right to come back to the court in the event there is need to sell any property that is under life interest.
25. This purport of section 35 in providing a life interest in the whole residue of the net intestate estate: was highlighted by Musyoka J in *Tau Kakungi v Margrethe Thorning Katungi & another* [2014] eKLR, to prevent a spouse of the deceased from being impoverished after the demise of the other by distributing the entire estate to the children. He pointed out;
 

"The effect of section 35 (1) is that the children of the deceased are not entitled to access the net intestate estate so long as there is a surviving spouse. The children's right to the property crystallizes upon the determination of the life interest following the death of the life interest holder or her remarriage. Prior to that, the widow would be entitled to exclusive right over the net estate...The device is designed to safeguard the position of the surviving spouse. The ultimate destination of the net intestate estate where there are surviving children is the children. It is the children who are entitled of right to the property of their deceased parent. However, if the property passes directly to the children, in cases where there is a surviving spouse, he or she is likely to be exposed to destitution. This would particularly be the case



where the surviving spouse was wholly dependent on the departed spouse. She would be left without any means of sustenance.”

26. It is imperative to point out that the life interest for the spouse, is over the whole of the remainder of the estate. This is important in answering the question of the position of the spouse who is the legal representative/administrator of the estate. This spouse other than enjoying the life interest is also bound by the provisions of the law relating to personal representatives of a deceased person
27. The powers of personal representatives and duties are set out under section 82 and 83 of the [Law of Succession Act](#). Section 84 provides for the cases where personal representatives act as trustees, one of those cases, is where the administrator of a deceased person involves a life interest. This is what it says;84. Personal representatives to act as trustees in certain cases;

“Where the administration of the estate of a deceased person involves any continuing trusts, whether by way of life interest or for minor beneficiaries or otherwise, the personal representatives shall, unless other trustees have been appointed by a will for the purpose of the trust, be the trustees thereof: Provided that, where valid polygamous marriages of the deceased person have resulted in the creation of more than one house, the court may at the time of confirmation of the grant, appoint separate trustees of the property passing to each or any of those houses as provided by section 40.”
28. The property of the deceased vests in the personal representative not in absolute ownership but as a trustee. Effectively that the legal representative/the administrator of the estate holds the estate in trust for the beneficiaries of the estate. See the holding [In re Estate of Julius Muniano \(Deceased\)](#) [2019] eKLR quite illustrative of the import of the provisions of section 79, 82 and 83 of the [Law of Succession Act](#).
29. The duty to render account is created by law at section 83(e), (g), (h) and (i). The law states;
  - “(e) within six months from the date of the grant, to produce to the court a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of the account;...
  - (g) within six months from the date of confirmation of the grant, or such longer period as the court may allow, to complete the administration of the estate in respect of all matters other than continuing trusts, and to produce to the court a full and accurate account of the completed administration;
  - (h) to produce to the court, if required by the court, either of its own motion or on the application of any interested party in the estate, a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of the account;
  - (i) to complete the administration of the estate in respect of all matters other than continuing trusts and if required by the court, either of its own motion or on the application of any interested party in the estate, to produce to the court a full and accurate account of the completed administration.
30. There is no exemption created where the administrator is the spouse of the deceased. Hence, it is not true that the spouse who becomes the administrator is not bound to account for his/her dealings with the estate. The respondent herein has the duty to account.



31. The respondent argues that she sold some property to take care of her needs and the needs of the children. However the life interest she enjoys does not give her the absolute ownership of the property to do with it as she wills. It is clear she is to seek the consent of the children who are of full age/or the consent of the court in disposing of immovable property. In this case there was no evidence that she had sought the consent of her children who were of age/or the court to dispose of any property.
32. The respondent also argues that since she transferred all the properties to her name, there is no property that belongs to the deceased, and hence there is no estate of the deceased to speak about.
33. Evidently she is mistaken. As demonstrated herein above she is allowed to own the property but as the personal representative of the deceased. Of course as the spouse it is possible that she too contributed to the acquisition of that property. It is my view that nothing stops a spouse from laying evidence, at the point of distribution to show that the property in the name of their deceased spouse is not free property for distribution. She could also choose to distribute the estate and retain what she considers hers if there is no objection from those beneficially entitled to the estate.
34. In any event, a perusal of the record reveals that the respondent's intent was to distribute the estate to the children. She filed in court the document dated February 13, 2022. In it she set out what she termed;  
  
“Schedule of assets and proposed mode of distribution.”

She indicated that she was doing so. “In compliance with orders of the court issued on January 24, 2017”. She indicated those beneficially entitled to the property to be;

- a) Esther Njeri Chege – Widow
- b) John Ngethe Chege – (Deceased)
- c) Mary Wanjiru Mbugua
- d) Daniel Karungu Chege
- e) Elizabeth Ngendo Kinuthia
- f) Patrick Peter Chege

That she had disposed of three properties;-

1. Plot no 2012 Kisauni Mombasa to cater for Patrick Peter Kamau and family of late John Ng'ethe Chege.
2. Plot no 2087/1 Kongowea, Mombasa to purchase Nakuru Municipality Block 27/473.
3. Plot no A/189 Roysambu Nairobi, proceeds applied to completion of her home in Mbaruk and development of Rental premises on the Bangladesh plot.
4. The rest she proposed to distribute as follows;



Property	Proposed Distribution
Kampi ya Moto/Menengai block 1/537 measuring approximately 2.8 acres	To be registered in favour of John Ngethe Chege
Kampi ya Moto/Menengai Block 1/538 Measuring approximately 1.13 HA.	To be registered in favour of Daniel Karungu Chege
Kiambogo/Miroren I Block 1/2400 (Itherero) Measuring approximately 0.81 HA.	To be registered in favour of Mary Wanjiru
Kiambogo/Miroren I Block 1/2401 (Itherero) Measuring approximately 0.81 HA.	To be registered in favour of Elizabeth Ngendo
Kiambogo/Miroren I Block 1/2398 (Itherero) Measuring approximately 2.94 HA.	To be registered in favour of Peter Patrick Kimani
Kiambogo/Miroren I Block 1/2399 (Itherero) Measuring approximately 1.22 HA.	In favour of Esther Njeri Chege
Kiambogo/Miroren I Block 1/398 (Itherero) Measuring approximately 0/1873 HA.	To be disposed off and the proceeds shared equally amongst the beneficiaries.
Muguga/Kanyariri/T.463	To be disposed off and the proceeds shared equally amongst the beneficiaries.
Nakuru Municipality Block 27/473	In favour of Esther Njeri Chege
Block 27/119 (Mwariki)	In favour of Esther Njeri Chege
Block 27/188 (Bangladesh)	In favour of Esther Njeri Chege

35. It is apparent that as at that time the Respondent was aware that she was dealing with the estate, not only as spouse of the deceased, but also as the sole administrator. It is therefore only in order that she gives an account of what she had done with the estate as the administrator.
36. From the foregoing the following orders proceed:-
- i. That the respondent to produce for the court an account as provided for by section 83 (e) of the Law of Succession Act within 45 days hereof.
  - ii. The prayer for nullification of the disposal of parts of the estate will be dependant on that report.

Orders accordingly.



**SIGNED, DATED AND DELIVERED VIA EMAIL THIS 2<sup>ND</sup> DAY OF FEBRUARY 2023.**

**Mumbua T. Matheka**

**Judge**

**C/A Jeniffer**

**For applicant: Mirugi Kariuki & Co Advocates**

**For respondent: Waiganjo & Co Advocates**

